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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 149

R. WRIGHT ARMSTRONG, JR., PETITIONER,

vs.

SALVATORE E. MANZO ET UX.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
OF TEXAS, EIGHTH SUPREME JUDICIAL DISTRICT

PETITION FOR CERTIORARI FILED JUNE 3, 1964
CERTIORARI GRANTED OCTOBER 12, 1964

SUPREME COURT OF THE UNITED STATES

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SALVATORE E. MANZO ET UX.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS
OF TEXAS, EIGHTH SUPREME JUDICIAL DISTRICT

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IN THE
DISTRICT COURT OF EL PASO COUNTY, TEXAS
120th JUDICIAL DISTRICT
No. 102,485

In the Matter of the Adoption of
Molly Page Armstrong, a Minor.

Plaintiffs' Petition for Adoption—Filed March 12, 1962

To the Honorable Judge of Said Court:

Petitioner, Salvatore E. Manzo, joined herein by his wife, Alice Davis Manzo, respectfully petitions this Honorable Court for leave to adopt Molly Page Armstrong, a minor, upon and for the following facts and grounds:

1. The Petitioner, Salvatore E. Manzo, is of the white race and is 44 years of age. The Petitioner is duly married to Alice Davis Manzo, who is 33 years of age, of the white race, and is the natural mother of said minor child, Molly Page Armstrong.

2. The Petitioner and his wife are domiciled and reside in El Paso County, Texas, at 7401 Arnold Drive, El Paso, Texas, which is within the 120th Judicial District of Texas.

3. The name to be given such minor child through adoption is: Molly Page Manzo.

4. Said child is a girl, is of the white race and was born on the 24th day of June, 1957 in Ft. Worth, Tarrant County, Texas.

5. Said child, a minor as above alleged, has been living in the home of Petitioner and his wife since their marriage on March 11, 1960. Petitioner is capable of properly caring for the child and desires to continue the care, support and education of said child, as he has been doing since he married the child's mother.

6. Petitioner's wife, Alice Davis Manzo, is the natural mother of said child sought to be adopted; she has given her consent in writing to such adoption and is desitous [fol. B] that petitioner shall adopt said child, and jointly with her have the status of a natural parent of said child, and she joins in this petition for such purpose, and her consent is filed with the records of this proceeding.

7. Written consent of the natural father, R. W. Armstrong, Jr., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability to do so for a period in excess of two (2) years, and the Judge of a Juvenile Court of El Paso County, Texas, to-wit: Judge Mulcahy, Judge of the 41st Court, has consented in writing to said adoption under provisions of Section 6, Article 46A, Texas Civil Statutes.

8. Petitioner bears no blood relationship to such child, but is taking care of and supporting said child.

9. The child is an adoptable child and Petitioner is a suitable adoptive parent, having served for over twenty-two years in the United States Air Force, and presently serving in said Air Force, with the rank of Colonel, being stationed at Biggs Air Force Base, El Paso, Texas. Petitioner can provide a suitable home for said minor child.

10. The child sought to be adopted resides and is domiciled in El Paso County, Texas; said child has lived with Petitioner since March 11, 1960.

Premises Considered, Petitioner, Salvatore E. Manzo, prays the Court that, after due notice, hearing and proceedings for leave to adopt the said minor, this Petition for Adoption of said minor be granted in all things, and for such other orders and relief as Petitioner may be en- [fol. C] titled to either at law or in equity.

Salvatore E. Manzo, Petitioner.

Duly sworn to by Salvatore E. Manzo, jurat omitted in printing.

The Undersigned, natural parent of Molly Page Armstrong, a minor, consents to the adoption prayed for in the above and foregoing Petition, filed herein on this, the 12th day of March, 1962; and, as required by statute for such a consent, such natural parent states the name of such child is Molly Page Armstrong, and that such child's birth date and place were: June 24, 1957, City of Ft. Worth, Tarrant County, Texas; and the parent hereby agrees and consents to the child's adoption upon the judgment of said Court, which is one of competent jurisdiction.

Alice Davis Manzo.

Duly sworn to by Alice Davis Manzo, jurat omitted in printing.

[fol. D] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

MOTHER'S AFFIDAVIT—Filed March 12, 1962

The State of Texas)
County of El Paso)

Before Me, the undersigned authority, on this day personally appeared Alice Davis Manzo, who, being by me first duly sworn, stated upon oath as follows:

That the father of my minor child, Molly Page Armstrong, is R. W. Armstrong, Jr. Further, Affiant states that the said R. W. Armstrong, Jr. has failed to contribute to the support of the said minor child, Molly Page Armstrong, for a period in excess of two years preceding this date.

Alice Davis Manzo

Subscribed and Sworn to before me by the said Alice Davis Manzo this 12th day of March, 1962, to certify which witness my hand and seal of office.

Beatrice C. Nelson, Notary Public, El Paso County, Texas.

(Seal)

My commission expires June 1, 1963.

[fol. E] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

JUDGE'S CONSENT—Filed March 12, 1962

The father of the minor, Molly Page Armstrong, having failed to contribute to the support of such child during a period in excess of two years, I, the undersigned, ..., Judge of the 41st District Court of the County of El Paso, Texas, a Juvenile Court, do hereby consent to the adoption prayed for in the above-captioned matter, filed herein on this 12th day of March, 1962.

David E. Mulcahy, Judge of the 41st District Court of the County of El Paso, Texas, a Juvenile Court.

[fol. F] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

INVESTIGATRIX' REPORT—Filed March 21, 1962

To the Honorable Judge of Said Court:

Comes now Grace O'Brennan, duly appointed Investigatrix in the above matter, and makes this her report as follows:

Molly Page Armstrong, the subject of this adoption, is a white, female child, age 4 years old, almost five. She is little, and bouncy, and perfectly at ease. When I was there she was so busy playing with a group of children that only her innate courtesy caused her to greet me and speak a few words with me. She plays well with her little step-sister, who is only about a year older than she, and with other neighboring children. She attends kindergarten now, and her parents say she is eager, obedient, friendly, and likes her school. She appears to be healthy and well coordinated, too. She has 3 step-sisters and brothers, all children of Mr. Manzo, Janeen age 19, John age 15, and Joanne age 5. I met them; all are intelligent, well mannered and outgoing.

Alice Flournoy Davis (Armstrong) Manzo, the natural mother, is 33 years of age; she was born in El Paso; she has an all-level art teaching certificate and expects to have her Masters Degree within the next year. When she was at college she met and married Wm. H. Keys; she was 21 at the time of the marriage; he was 24. They were both of the Episcopal religion. She still attends Grace Episcopal Church; as do the children:

She says she felt this marriage failed because of herself; they were divorced in November of 1954 in Corpus Christi, Texas. Her husband secured the divorce. Two other children were born of that marriage, Alice, age 10, and William age 8; she kept neither of them. They live with their natural father. Mrs. Manzo is a quick, intelligent woman, with great charm and not too much depth. My impression is that she is kind and perhaps impulsive. She was attending school in Austin, Texas, when she met her second husband, Robert Wright Armstrong, the natural father of the child under consideration. After a very brief acquaintance they were married, in October of 1956. That marriage lasted 3 years; Molly was born in June of 1957, and they were divorced when she was 2 years of age. It is my impression that her second marriage was strictly from impulse. She found Mr. Armstrong to be an alcoholic and completely lacking a sense of responsibility. She says she is capable of teaching and earning a salary of about $5,000.00 a year herself, and she has approximately $14,000.00 in stocks, which pay dividends.

[fol. G] *The Home:* is in a housing development in Biggs Air Force Base. Every inch is planned for the best possible living in the least possible space; this is not apparent, however, because Mrs. Manzo appears to have a real talent for homemaking. She has combined inexpensive and practical new things with a few striking antiques and oddities from their travels in such a way that it gives the effect of spaciousness and charm. By the smells when I was there, she is also an excellent cook. Her husband had a caller, who obviously had come for marital advice, and she evidenced great charm and skill in getting everyone happily separated. Her step childen appear to love and trust her and she obviously respects her husband. I feel as if this marriage is probably what Mrs. Manzo has been seeking for a long time. I know from her references in our visit to other people in El Paso with whom she is friendly that she is traveling with a crowd of people who are tolerant, conscientious, and home-lovers, and skillful mothers.

Salvatore Edward Manzo, the adoptive father, is 45 years of age. He was born in Brooklyn, New York, of Catholic parents; he left home when he finished high school, and continued on through College, graduating with a B.S. degree. When he was through college he joined the Air Force. He met and married Constance Evelyn Hillery when she was 21 and he 24. They remained married for 17 years and were divorced in El Paso in August, 1958; the underlying cause was his wife's alcoholism. It was almost two years later that he met and married Alice Flournoy Davis. He had custody of the 3 children born of his marriage to his first wife. They are lovely children, and seem truly fond of his second wife; the eldest child inquired why Mrs. Manzo did not adopt them, now, and she said very gently that such an action would probably hurt their natural mother, and that they all now shared the same name, anyway. All of his children approve of his marriage to Flournoy. The Manzos have wills recently prepared, providing for the care and custody of all their children. They are not expecting now. Should anything happen that the Manzos die simultaneously they wish their financial matters handled by Mr. and Mrs. John O'Connor, E. Denton Lane, Phoenix, Arizona; and the children to be cared for by Mr. and Mrs. C. H. Wooten (Mrs. Manzo's mother and step-father), 306 Terrace Road, Houston, 7, Texas.

Mr. Manzo is a Colonel in the Air Force stationed at Headquarters of the 810th Air Division, SAC; his serial number is 1695A; his present income is around $13,500.00 per year from the Air Force. He plans to live in El Paso after his retirement. He has had pilot training and attended National War College. He still attends regularly Catholic Services with his family. Colonel Manzo is firm, concise, pleasant, and unequivocal. He strikes me as a sincere and conscientious person, and one capable of giving Mrs. Manzo the security she needs. I was very favorably impressed with this family, despite the past history of the natural mother. You will remember, Judge, that the Davis family *is* inclined to be rather "sudden" at times, but on the whole are of high principle and do settle down.

I recommend this adoption.

March 20, 1962.

Grace O'Brennan

Duly sworn to by Grace O'Brennan, jurat omitted in printing.

[fol. H]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

JUDGMENT—April 27, 1962

This, the 27th day of April, 1962, in the above matter, came on to be heard the Petition of Salvatore E. Manzo, joined by his wife, Alice Davis Manzo, Petitioner, for the Adoption of Molly Page Armstrong, a Minor, referred to in such Petition; and

It appearing to the Court that such Petition, duly verified by the Affidavit of said Petitioner, was filed and docketed by the Clerk of this Court on the 12th day of March, 1962; that upon such filing and docketing, such Clerk mailed a Certified Copy of such Petition to the Executive Director of the State Department of Public Welfare at Austin, Texas, and noted the date of such mailing upon the docket; that upon the filing of such Petition, the Court appointed a time and place for hearing such Petition; that such order was duly and correctly made and entered of record and that the recitations and facts therein stated were and are true and correct; that on the same day the Court by order appointed an investigator and caused an investigation to be made for the purpose of determining whether such Minor is a proper subject for adoption, and whether the home of Petitioner is a suitable home for such child; that such order was duly and correctly made and that the recitations and facts stated therein were and are true and correct; that such investigator duly made an investigation in accordance with such order, and having had a reasonable time for such investigation, in accordance with such order duly made a full written report, verified by her affidavit, the result of which investigation was embodied in such full written report, which report was duly filed herein on the 21st day [fol. I] of March, 1962, and was thereupon duly filed with the records of such proceeding, giving all such information as required by law regarding the former environment and antecedents of said child and of the home of the Petitioner; that the facts stated therein were true and correct; that such report prior to this hearing was submitted to the Court and is now before the Court; that such Petition is likewise before the Court, has been duly heard and is sufficient under the law; that the matters, facts and grounds set out in the Petition are all and singularly true and correct; that such Minor is a proper subject for adoption as therein prayed; that the residence of Petitioner is in El Paso County, Texas, which is in the 120th Judicial Court District; that the home of Petitioner is a suitable home for such child, Molly Page Armstrong, a Minor; that the Court is satisfied that such child and home are suited to each other; that Petitioner and said Minor, Molly Page Armstrong, are white persons; that Petitioner's wife, Alice Davis Manzo, is the natural mother of said child sought to be adopted; she has given her consent in writing to such adoption and is desirous that Petitioner shall adopt said child, and jointly with her have the status of a natural parent of said child, and that she joins in this Petition for such purpose, and her consent is filed with the records of this proceeding. Written consent of the natural father, R. W. Armstrong, Jr., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability for a period in excess of two (2) years, and the Judge of a Juvenile Court of El Paso County, Texas, to-wit: Judge David E. Mulcahy, Judge of the 41st District Court, has consented in writing to said Petition for Adoption under provisions of Section 6, [fol. J] Article 46A, Texas Civil Statutes.

Said Minor, Molly Page Armstrong, has lived for over six months in the home of Petitioner, and the Court having, moreover, heard evidence and found such evidence substantiates the foregoing and that such Petition and leave to effect such adoption should be granted, and such adoption should be effected; and that it would be for the best interest of Molly Page Armstrong that her name be changed to Molly Page Manzo; and it appearing to the Court that all prerequisites thereto have been duly and properly performed, it is accordingly ordered, adjudged and decreed on this 27th day of April, 1962, that such leave and such Petition be, and they are hereby granted, and that such adoption by the Petitioner, Salvatore E. Manzo, joined by his wife, Alice Davis Manzo, be, and the same is hereby effected.

It Is Further Ordered, Adjudged and Decreed that by reason hereof, all legal relationship and all rights and duties between such Child and the natural father shall cease and determine, and such Child is hereafter deemed and held to be for every purpose the child of its parent by adoption, as fully as though naturally born to him in lawful wedlock. Said child shall be entitled to proper education, support, maintenance, nurture and care from said parent by adoption, and said parent by adoption shall be entitled to the services, wages, control, custody and company of said adopted child, all as if the child was his own natural child. For purposes of inheritance under the laws of descent and distribution, such adopted child shall be regarded as the child of the parent by adoption, such adopted child and its descendants inheriting from and through the parent by adoption and his kin the same as if such child was the natural legitimate child of such parent by adoption. The [fol. K] next of kin of the natural father of such child, and the natural father of such child, shall not inherit from or through said child, but said child shall inherit from and through her natural parent or parents. Nothing herein shall prevent anyone from disposing of his property by will, according to law. Such adopted child shall be regarded as a child of the parent by adoption for all other purposes as well, except that where a deed, will or other instrument uses words clearly intended to exclude children by adoption, such adopted child shall not be included in such class.

It Is Further Ordered, Adjudged and Decreed that the said Molly Page Armstrong shall be known by the Christian and Surname as Molly Page Manzo, from this day forward.

It further appearing to the Court that all costs of this proceeding have been paid, no execution shall issue.

Hans E. Brockmoller, Judge—District Court of El Paso County, Texas, 120th Judicial District of Texas.

[fol. L] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG.

MOTION FOR NEW TRIAL—Filed May 7, 1962

To the Honorable Judge of Said Court:

Now comes R. Wright Armstrong, Jr., natural father of Molly Page Armstrong, and files this his motion for new trial in this cause, and in support thereof would show the court as follows:

1.

The petitioner herein did not have notice, actual or constructive, of the filing of this suit, or of the judgment entered herein until after the rendition of the judgment.

2.

Petitioner herein did not at any time give his consent for his minor child, Molly Page Armstrong, to be adopted by any person, including the petitioners in this case.

3.

Petitioner, the natural father of Molly Page Armstrong, has not voluntarily abandoned or deserted said child at any time, and has not failed to contribute substantially to the support of such child during a two year period commensurate with his financial ability.

4.

The judgment in this case is contrary to the law and the evidence in such cases.

[fol. M] Wherefore, petitioner prays that the judgment entered be in all things set aside, and a new trial granted.

Respectfully submitted,

McEntire & Murad, Ellison Building, Fort Worth 2, Texas, Attorneys for Petitioner.

Of Counsel: Rex McEntire.

[fol. N] [File endorsement omitted]

In the District Court of El Paso County, Texas

120th Judicial District

No. 102,485

Amended Motion for New Trial and Motion to Vacate Judgment and Order Setting Date of Hearing Thereof—May 25, 1962

To the Honorable Judge of Said Court:

Comes Now, R. Wright Armstrong, Jr., natural father of Molly Page Armstrong, and, with leave of the Court having been first obtained, files this his amended motion for new trial in this cause and moves to vacate the judgment and decree herein, and in support hereof would show the Court the following:

I.

The judgment entered in the above proceeding on the 27th day of April, 1962, granted leave to Salvatore E. Manzo, joined in his petition by his wife, Alice Davis Manzo, to adopt the said Molly Page Armstrong.

II.

Petitioner herein and Alice Davis Manzo, are the natural parents of Molly Page Armstrong, but were divorced from each other on the 6th day of November, 1959, in cause number 16544-F in the 96th Judicial District Court of Tarrant County, Texas.

III.

At the time the above entitled and numbered proceeding came on to be heard and judgment rendered, your Petitioner had never been advised or given notice, actual or constructive, as required by the laws of Texas, that this proceeding was to be heard or that it was even pending or of the judgment herein until after the rendition of the judgment, nor was any attempt made to notify Petitioner in any way of this proceeding although his address and whereabouts were well known to the parties, in fact the parties to this proceeding deliberately and wrongfully [fol. 9] withheld all notice from Petitioner for the expressed purpose of denying him any opportunity to appear, contest and present his defenses to this proceeding; and that Petitioner was prevented from appearing and presenting his defenses not by his own fault or negligence but rather by the deliberate and wrongful acts of the parties to this proceeding.

IV.

The parental rights of Petitioner as the natural father of said child have never been taken from Petitioner nor has he waived them.

V.

Petitioner has never at any time voluntarily abandoned or deserted said child, but on the contrary, since his divorce from the child's natural mother, had said child in his possession and care for substantial periods each summer and each Christmas during the years 1960 and 1961.

VI.

Petitioner has not failed to contribute substantially to the support of said child during a two year period commensurate with his financial ability, as was represented to the Court by the parties to this proceeding, but rather has, since his divorce from the child's natural mother, continually contributed substantially to the support of said child commensurate with his financial ability, a fact that was and is well known to the natural mother of said child.

VII.

No one, including the parties to this proceeding, has ever sought Petitioner's consent for his child, Molly Page Armstrong, to be adopted by anyone, and Petitioner has never at any time given his consent for his said child to be adopted by any person, including the parties to this proceeding, such consent being necessary under the laws of Texas before said child could be properly and legally adopted by anyone, including the parties to this proceeding.

[fol. P]

VIII.

Petitioner has a great love and affection for his minor daughter and has at all times demonstrated that love and affection, and the judgment in this proceeding would have the effect of wrongfully denying to petitioner his lawful rights as the child's natural father and would have the effect of wrongfully denying to said child her natural father to whom she has demonstrated her love and affection.

IX.

The judgment in this proceeding is contrary to the law and the evidence in such cases.

Wherefore, Petitioner prays that the judgment and decree entered in this proceeding be in all things vacated, set aside and annulled and a new trial granted.

Respectfully Submitted

Joe A. Morgan, By: W. Barton Boling, Attorney for R. Wright Armstrong, Jr., Petitioner.

[fol. Q] The State of Texas)
County of El Paso)

Before Me, the undersigned authority, personally appeared R. Wright Armstrong, Jr., to me known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first duly sworn, on oath says, that he has read the foregoing motion designed to be used in The Matter of the Adoption of Molly Page Armstrong, a Minor, in cause number 102,485 in the 120th Judicial District Court of El Paso County, Texas, and knows the contents of such motion and that such motion and the statements and allegations thereof are true and correct.

R. Wright Armstrong, Jr.

Sworn to and Subscribed before me this 19th day of May, 1962, to certify which witness my hand and seal of office.

M. A. Russon, Notary Public in and for El Paso County, Texas.

ORDER

The foregoing Amended Motion for New Trial and Motion to Vacate Judgment having been duly filed with leave of the Court and brought to the attention of the Court within the time provided by law, it is hereby Ordered and the parties are hereby notified that the hearing for this Motion is set for the 14th day of June, 1962, at 9 o'clock A. M. in the Courtroom of the 120th Judicial District Court of El Paso County, Texas.

Hans E. Brockmoller, Judge

[fol. R] Certificate of service (omitted in printing).

[fol. 1] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120th JUDICIAL DISTRICT

No. 102485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

STATEMENT OF FACTS—June 22, 1962

Be It Remembered, that on the hearing on a motion for new trial in the above entitled and numbered cause, filed by R. Wright Armstrong, Jr., before the Honorable Hans E. Brockmoller, Judge of the 120th Judicial District of Texas, on the 22nd day of June, 1962, the following was all the oral testimony and documentary evidence introduced:

APPEARANCES:

W. Barton Boling, Esq., appearing for R. Wright Armstrong, Jr.

W. O. Craft, Esq., and Weldon S. Copeland, Esq., appearing on behalf of Salvatore E. Manzo and Mrs. Manzo.

The rule was invoked at the request of Mr. Craft, and all the witnesses present in the court room were duly sworn by the court and the rule explained to them.

[fol. 2] MRS. ALICE MANZO, having been by the court first duly sworn, testified as follows:

Direct examination.

By Mr. Boling:

Q. Would you state your full name, please?
A. Alice Flournoy Davis Manzo.
Q. Where do you reside, Mrs. Manzo?

A. 3012 Titanic.

Q. Here in El Paso?

A. Yes sir.

Q. You are married to whom?

A. Salvatore Edward Manzo.

Q. You were at one time married to R. Wright Armstrong Junior, that is here in court?

A. That is correct.

Q. As I understand it, you and Mr. Armstrong had one child, is that correct?

A. That is correct.

Q. What is that child's name?

A. Molly Page.

Q. Molly Page Armstrong?

A. Right now it is Molly Page Manzo.

Q. All right, now when were you divorced from Mr. Armstrong?

A. In November of 1959, I believe.

[fol. 3] Q. November, 1959?

A. Uh huh.

Q. And where was that divorce obtained?

A. In Fort Worth.

Q. In Fort Worth, Texas. Do you remember what court it was in?

A. No, I don't.

Q. Now, you recall, incident to that divorce decree, as to what arrangement or order was entered as to child support?

A. At the time a $50.00 a month agreement was made, it was cut from $60.00, I remember the judge saying—

Q. I am not asking you what the judge said, do you remember what the judgment said?

A. Fifty dollars.

Q. Do you recall what the judgment said as to when it was payable?

A. By a certain date of the month, each month.

Q. Certain date of the month. Did Mr. Armstrong make any child support payments to you, following the divorce?

A. Yes, he did.

Q. When did he make those payments, do you recall?

A. He made one, I believe it was in December, and the other one was in February. Two payments.

[fol. 4] Q. Now, December, you mean December 1959?

A. Uh huh.

Q. And how much was that one?

A. Fifty dollars.

Q. Fifty dollars, and then you say the other was made when?

A. In February, I believe.

Q. February?

A. I believe it was February, February or March.

Q. What year?

A. 1960.

Q. 1960. And how much was that one?

A. To the best of my memory, I believe it was a hundred dollars.

Q. You don't recall exactly?

A. No, I don't.

Q. All right now, Mrs. Manzo, of course you joined in the petition in this case, didn't you, for the adoption of Molly Page, by your present husband?

A. Yes, I did.

Q. I see. And in that petition as I understand it—Judge, could we see the petition. (Here the petition was handed to counsel.) This petition has been filed in this case, Mrs. Manzo, and the last page here, there is an affidavit signed Alice Davis Manzo; you signed that, didn't you?

A. I did.

[fol. 5] Q. Now, Mrs. Manzo, after your divorce from Mr. Armstrong, where did you go to live?

A. I lived at the home of my grandmother, Mrs. W. W. Wilkey, 3110 Federal.

Q. What city is that?

A. El Paso.

Q. Here in El Paso. Were you employed at the time you came down here?

A. I came in August, I was employed the first of September, for the El Paso Public School system.

Q. You came here in August of when?

A. '59.

Q. '59. And you were employed then by the El Paso Public Schools, I mean, starting in September, 1959?

A. That is correct.

Q. How long were you employed by the El Paso Public Schools?

A. Through February of 1960.

Q. Through February of 1960?

A. That is correct.

Q. You recall what your rate of pay was then?

A. It was the standard rate, whatever a first year teacher makes.

Q. What was that?

A. I am sorry, I would have to go look at the records, I think it runs around two hundred a month, I may be wrong.

[fol. 6] Q. Two hundred a month?

A. Yes.

Q. It is your recollection that is all you received?

A. Whatever the going rate is for first year school teachers, maybe it is three hundred.

Q. You remember incident to this investigation there was an investigation had, wasn't there, I mean, weren't you approached by investigators from the welfare people?

A. Yes indeed.

Q. Did you make any comment to them as to what your earning capacity was?

A. I think whatever the first year school teacher receives, in fact, I asked the child welfare investigator and I think she gave me an answer.

Q. Mrs. Manzo, this is the investigator's report that has been filed in this case?

A. Uh huh.

Q. And there is a remark made on the first page, speaking of you, "she said she is capable of teaching and earning a salary of about five thousand dollars a year herself".

A. This includes personal property of mine I had invested, and the total amount that I would probably earn in a year, including my investments would total five thousand [fol. 7] dollars a year.

Mr. Craft: Counsel objects to the continuation of this line of questioning in that it is immaterial to the issue here.

it is not determining the capability of the natural parent of Molly Page that is in question, it is determining the capability of the natural father who is in question.

The Court: The court does not see the relevancy of it, I will sustain the objection.

Mr. Boling: If I might be heard, I think there is a point we have on that that would be tied up later on, concerning possible agreements reached between Mrs. Manzo and Mr. Armstrong, tied into here.

The Court: Let's get along.

Q. When were you married to Mr. Manzo?

A. I was married to Colonel Manzo, on March 11, 1960.

Q. March 11, 1960?

A. Yes.

Q. Of course, you were here in El Paso at that time?

A. Yes.

Q. I see. And as I understand—you recall when this petition was filed, I believe it indicates it was filed on March 12, 1962. What day were you married to Mr. Manzo in 1960?

A. March 11th.

[fol. 8] Q. March 11th. I see, in other words this petition was filed exactly—

A. Two years.

Q. —almost to the date, two years afterwards?

A. That is right.

Q. Did you, after your marrage to Mr. Manzo, did you ever make any demand upon Mr. Armstrong for child support?

A. I have a note—I have a letter somewhere that states Wright is behind in his child support payments, I think from Win Hooper to Elmo Irby, and Elmo said he would talk to Wright and see if he could get some child support out of him.

Q. When was that letter, do you recall?

A. In the period between December 1959, and March 1960.

Q. My question was, after your marriage though, did you ever make any demand—

A. Oh, nothing other than to notify the clerk at Tarrant County of my change of address and name.

Q. That was the only inquiry or demand you made, of child support, was merely advising them of your change of address?

A. In case there were any child support payments.

Q. Did you at any time notify Mr. Armstrong this adoption was pending?

[fol. 9] A. No, I did not.

Q. And did Mr. Armstrong, to your knowledge, ever give consent, to your knowledge?

A. It was on record, sir, some sixty days.

Q. That isn't what I asked you, I said, do you know whether or not Mr. Armstrong ever gave his consent to this adoption?

A. No, he did not, no.

Q. You do know you made no notification to him in writing of it?

A. I gathered it wasn't necessary.

Q. I understand, but my question is, you did not give him any written notice?

A. No, I did not.

Q. And it was your understanding it was not necessary?

A. That is correct.

Q. Then, to your knowledge, as far as you know, Mr. Armstrong never had any knowledge of this proceeding while it was pending?

A. I gathered he did not need to know.

Q. He did not need to know, so your answer would be then, as far as you know, he did not know?

A. I don't know, it was on public record and notice, he could have or he could not have.

Q. You did not give him any notice?

A. No, I haven't corresponded with him.

[fol. 10] Q. All right now, during this two year period, Mrs. Manzo, did you make any inquiry or investigation as to the whereabouts of Mr. Armstrong, did you know where he was living?

A. Yes, I did.

Q. Did you know what he was doing?

A. He sent me a clipping when he was employed by one of the jobs in the court, in February of 1960, and other than that I did not know, other than talking to his mother when I would see her here, I would say "how is Wright," and she would say, "Fine, he is busy".

Q. And you did not yourself, make any investigation concerning his financial ability, or what he was making?

A. His financial ability?

Q. How much money he was making.

A. That is different than his ability.

Q. Did you make any inquiry as to how much money he was making?

A. No, I did not.

Q. All right now. You only had the one child by Mr. Armstrong?

A. That is correct.

Q. Do you and Mr. Manzo have any children?

A. No, we do not.

[fol. 11] Q. How many children do you have?

A. Three.

Q. Are they all living with you?

A. No, they are not.

Q. Is just this one, the only one living with you?

A. That is correct.

(Here an exhibit was marked by the reporter as exhibit P-1.)

Q. Mrs. Manzo, I show you what has been marked as petitioner's exhibit one, an envelope, shows on it there addressed to Mrs. R. W. Armstrong, there in Fort Worth, the stamp on it shows April 14, 1962, and here is a letter, do you recognize those two items?

A. Yes, I do.

Q. Is that a letter that was written by you to Mrs. Armstrong?

A. By me to Mrs. Armstrong? Yes, it is.

Q. That was one sent to her on April 14th, at least about that time, that is when it was stamped?

A. Yes, indeed.

OFFER IN EVIDENCE

Mr. Boling: We offer into evidence, exhibit 1, the letter and the envelope.

Mr. Craft: I would like—counsel would like to object until it is indicated for what purpose it is introduced, it does [fol. 12] not appear to have any materiality in the issue at hand, whether or not the father had financial capability of supporting, two years immediately preceding the adoption.

Mr. Boling: It bears on the element of notice, your honor.

Mr. Craft: There is a necessity for identifying petitioners v. respondents, the Manzos through attorney Craft are petitioners and the respondent is the Armstrongs, through attorney Boling, if we can clarify it for the record.

The Court: This is basically true, the petitioners are—in causes of motion for new trial, it makes little or no difference out they are identified, the court will instruct the Reporter to identify Mr. and Mrs. Manzo as the petitioners in the cause, and Mr. Armstrong as the respondent, as to a hearing on a motion for new trial that would be the proper identification.

(Whereupon the exhibit was remarked by the Reporter as exhibit R-1.)

The Court: It will be admitted in evidence.

Respondent's exhibit 1, being as follows:

Envelope:

"Mrs. Salvatore E. Manzo
7401 Arnold Drive
Biggs Air Force Base, Texas

El Paso
April 14
1 PM
1962
Tex.

Mrs. R. W. Armstrong
5803 El Campo
Fort Worth, Texas."

[fol. 13] Letter:

"Dear Mamaw,

Our letters crossed in the mail. I had mailed my note to you before I received yours asking about June. June is a fine time for Molly Page to go visit. I'd like to settle on the exact day and time a little bit later.

Right this moment I don't know what day her school is out (and there's a *big* program she's to be in), and we're not settled on when we can have her tonsils out—a long waiting list, and a few other little odds and ends that I'm sure we'll know about in the next few weeks. However, we can certainly settle on June unless something unforeseen comes up.

Sincerely,

Fleur."

Q. Mrs. Manzo, after your marriage to Mr. Manzo, it was your desire that he adopt Polly Page, wasn't it, I mean, that was your wish, and is your wish now?

A. Yes it is.

Q. Is that the reason, because of that desire, is that the reason that you never pursued, or sought any additional child support from Mr. Armstrong during that two year period?

A. No it was just like trying to squeeze blood out of a turnip, I tried, there is plenty of evidence I had tried. I remember saying to Win Hooper, I will never get anything out of him.

Q. You have indicated you made one demand upon him, you thought it was around February?

A. Yes.

Q. I asked you whether you made any other demand on him?

[fol. 14] A. Other than to notify the clerk at Tarrant County.

Q. That is what you testified to, so you made no other efforts. What I was curious about was it because you were desirous of this adoption going through?

A. What good would it do, as in the petition there—

Q. That is not what I asked you, Mrs. Manzo, if you would please just answer the questions?

A. I think you are intimating something that does not necessarily have to be so.

Q. I am just asking you, I said, was that the purpose, you didn't pursue child support any more, you wished this adoption to go through?

A. Not necessarily.

Q. Not necessarily, but it might have had some bearing on it?

A. Possibly.

Cross examination.

By Mr. Craft:

Q. If I might, merely in pursuit of questions that have been opened by the respondent in this case, and with the right to recall, as my own witness a little later. Mrs. Manzo, prior to your remarrying Mr. Manzo on March 11, 1960, had you made more than one effort to solicit from your ex-husband, support and maintenance money, for and on behalf of Molly Page?

A. Prior to my marriage to Colonel Manzo?

[fol. 15] Q. Yes.

A. Had I made more than one effort?

Q. Yes.

A. Yes.

Q. Would you please tell the court the frequency of demands you can recall, and by what method you made those demands, up until such time as you were remarried, and your financial status was enhanced?

A. I remember writing a letter to Wright, asking him—

Mr. Boling: If they want to talk about a letter, if they have the letter, sent a letter they can put it into evidence—

A. He would have it, I would not have it.

The Court: Let's go ahead, the court will overrule the objection.

Q. Proceed?

A. I remember writing one letter to him while I was in Houston for the summer, in July or August.

Q. What year?

A. Of 1959, asking him to please send some money, if he had any, I needed some for Molly Page, and he wrote back and said "I am not about to send any", so then I guess the next time I wrote was probably after my lawyer in Fort

Worth assured me that it was very vital and necessary, and it was his duty to support this child.

[fol. 16] Mr. Boling: This is hearsay, talking about what people have told her, we object to it.

The Court: The matter is before the court, please let us try and just answer the question as asked without going into matters of hearsay, Mrs. Manzo.

A. Well, I don't have the letters because I wrote them.
Q. Mrs. Manzo, I show you a letter dated 20 January 1960 which is a thermofax copy of a letter—
A. Yes.
Q. And ask you if you have seen this letter before?
A. Yes indeed I have.

Mr. Craft: I would like to mark this P-1, for identification purposes only.

Q. This has been marked for identification as P-1, is this letter, this that has been marked for identification purposes, and being introduced into evidence now as P-1, is this letter a letter which you had in your file as having been furnished to you in regard to child support, by your retained counsel, who was your counsel during the time of the divorce from your ex-husband Mr. Armstrong?
A. That is correct.
Q. Would you read that letter?

Mr. Boling: We object to it being read until it has been admitted into evidence.
[fol. 17] The Court: Do you have an objection.
Mr. Boling: We object to it being offered, there is no foundation showing Mr. Armstrong ever had any notice of that letter.

(Discussion here omitted.)

The Court: The court cannot admit the letter in evidence.

Q. Would you please refresh your memory from looking at the letter which has not been introduced in evidence, and without reading it, answer my questions as I put them to you concerning the facts in issue. Did you, prior to 20 January, 1960, make any demands upon your ex-husband, Mr. Armstrong, for the purpose of obtaining child support payments, and if so, how did you make those solicitations from him, and through whom?

Mr. Boling: I object to this "through whom" business, because she has not—

Mr. Craft: I said "to whom and through whom did she, as an individual—

The Court: I will overrule the objection, let's get along here.

A. Through my attorney.

Q. And how did you make a request, or what was the tenor of the request?

A. Only to notify my attorney that the child support payments were in arrears and other questions.

[fol. 18] Q. And following this submission of a request to your attorney—who was your attorney?

A. Mr. Winfred Hooper.

Q. He was your attorney for the divorce?

A. That is correct.

Q. Following this request to Mr. Hooper, did you in fact receive the back alimony, back support money, through payment to the clerk of Tarrant County, as ordered by the court decree?

A. I believe I probably—that is probably what caused me to get the back payments.

Q. So then, prior to 20 of January, 1960, you did make demand through the only legal course of action you had at that time, your attorney of record?

A. That is correct.

Mr. Boling: Your honor, I would like to caution counsel not to be testifying, let the witness do that.

The Court: Don't lead your witness.

Q. I will restate the question, that you have testified—

The Court: It has been answered, let's go ahead, just don't lead your witness.

Q. The respondent in this case asked you to testify concerning the date, and the amount of money that the court judgment required that your ex-husband pay, and I would [fol. 19] like to have this marked for identification purposes only.

(Here an instrument was marked by the reporter as exhibit P-2.)

OFFERS IN EVIDENCE

Mr. Craft: It has been marked for identification purposes only as P-2 for petitioner, and if there is no objection from respondent I would like to introduce P-2, into evidence.

Mr. Boling: No objection.

The Court: Being no objection it will be received in evidence.

Mr. Craft: As a photostat of the judgment of the divorce of the 96th District Court, Tarrant County, Texas. I would like to merely identify the fact that the court decree did set forth fifty dollars.

The Court: It is in evidence in its entirety.

Exhibit P-2, being as follows:

"No. 16544-F
IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

F. D. ARMSTRONG

VS.

R. W. ARMSTRONG, JR.

JUDGMENT

On this 6th day of November, 1959, came on to be considered the above entitled and numbered cause, and came Plaintiff in person and by her attorney of record and announced ready for trial, but Defendant came not, having waived service of citation, acknowledged receipt of a copy of Plaintiff's original petition, entered a general appearance, and agreed to this hearing without notice to him, and the Court having heard and considered the pleadings, the evidence, the argument of counsel, being of opinion that judgment should be entered in favor of plaintiff, it is accordingly [fol. 20] ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between Plaintiff, F. D. Armstrong, and defendant, R. W. Armstrong, Jr. be, and they are hereby dissolved and Plaintiff is granted a divorce from Defendant. That the custody of Molly Page Armstrong, child of the parties, be, and it is hereby, given and granted unto Plaintiff, F. D. Armstrong, Defendant, R. W. Armstrong, Jr. to have the privilege of visiting with said child at reasonable times, places, and intervals. That the community and separate property of the parties be distributed by agreement of the parties. That Defendant be, and he is hereby, ordered to pay unto Walker Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of $50.00 per month, beginning November 16th, 1959, and continuing thereafter on the 16th day of each succeeding month until further order of this court, or until said child shall reach 18 years of age. That Defendant pay unto Plaintiff the sum of $100.00 as her reasonable attorneys fees in connection with this suit; and that all costs in this behalf expended be, and they are hereby adjudged against the defendant, R. W. Armstrong, Jr., for which let execution issue.

SIGNED, RENDERED AND ENTERED this 6th day of November, 1959.

s/ FISHER T. DERRY
Judge Presiding
96th District Court
Tarrant County, Texas

APPROVED AS TO FORM:

....
R. W. Armstrong, Defendant.

TILLEY, HYDER & LAW

By..
Tom Law
Attorneys for Defendant."

Mr. Craft: I would like to have marked for identification only P-3.

(Here the exhibit was duly marked for identification by the reporter.)

Mr. Craft: I would like to introduce into evidence exhibit P-3.

[fol. 21] The Court: There being no objection it will be received in evidence.

Exhibit P-3, being as follows:

"TARRANT COUNTY

Fort Worth, Texas

Lynn W. Ross
Chief Probation Officer
Walter Echols
Collector of Child Support

June 4, 1962

TO WHOM IT MAY CONCERN:

This is to certify that R. W. Armstrong Jr. made the following payments into this office as child support:

During 1959 he paid $50 in November.
During 1960 he paid $150.00 during February.

(sgd) WALKER ECHOLS
Collector of Child Support

STATE OF TEXAS
COUNTY OF TARRANT

Before me, the undersigned authority, on this the 4th day of June, 1962, appeared Walker Echols, and who after being duly sworn on his oath, states that the above statements are true and correct.

(sgd) SYLVIA DURHAM
Notary Public in and for
Tarrant County, Texas"

Q. The respondent in the case asked you, concerning the financial ability of your ex-husband versus the income of your ex-husband. I would like to know what was your knowledge concerning his financial ability to pay $50.00 per month, in accordance with the court judgment, during the two year period from March 11, 1960 to March 12, 1962?

A. His financial ability was more than adequate to cover [fol. 22] $50.00 a month child support payments.

Q. Did you have knowledge of his employment from—through communication with him?

A. None other than the clipping he sent me out of the papers, stating he had been hired as a something—by the city in some legal capacity, corporation court.

Q. Corporation court what, do you know?

A. No.

Q. Clerk, Judge, counsel?

A. He was handling cases for them.

Q. Did you at any time after, here, receive knowledge yourself, of the fact he ever had any termination of this employment?

A. No, I did not.

Q. Did you continue, through the two year period before filing the adoption proceedings, have reason to believe, from the facts you knew, that your ex-husband, Mr. Armstrong, was gainfully employed?

Mr. Boling: Your honor, I don't mind her testifying, but I am going to object to counsel testifying.

The Court: Well, let's get along counsel, the matter is before the court.

Mr. Craft: No further questions.

[fol. 23] Re-direct examination.

By Mr. Boling:

Q. Mrs. Manzo, just a couple of questions, you knew your ex-husband, Mr. Armstrong had been hospitalized, didn't you?

A. He was hospitalized in December, yes.

Q. December 1959?

A. I took him to the hospital.

Q. That is right. Was it while he was in the hospital you moved the furniture out of the house?

A. No, I moved it out the day—the day we moved it out, late in the afternoon he had the seizure, and I took him to the hospital, but the truck was packed.

Q. The truck was already packed, that is your testimony. Do you know how long he was in the hospital?

A. According to the testimony, two or three weeks.

Q. What testimony?

A. In the deposition.

Q. They haven't been offered in evidence, I am asking you of your knowledge?

A. Two or three weeks.

Q. But you got that from the deposition, right?

A. Yes.

Q. And you don't know how long he worked for the city there, do you?

A. No, I don't know.

[fol. 24] Mr. Boling: I think that is all.

Re-cross examination.

By Mr. Craft:

Q. One other additional question if I might. Did your ex-husband, Mr. Armstrong, ever tell you he had no ability to pay, or correspond with you, saying he had no ability?

A. No, he did not.

Q. Did your ex-husband ever petition the court, and ask them to reduce the payments, and did you appear before a court in such hearing, or was there ever any notice of any hearing, petitioning the court, as far as you know?

Mr. Boling: Your Honor, I get four questions out of that.

A. The last part of it I am sure, whether or not I had any notice of any such hearing.

Q. Did you have any notice of any hearing to reduce the payments, as the court had decreed?

A. No, I did not.

Mr. Salvatore E. Manzo, having been by the court first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

[fol. 25] Direct examination.

By Mr. Boling:

Q. State your name?
A. Salvatore Edward Manzo.
Q. That was your wife that just testified, wasn't it?
A. Yes.
Q. You live at the same address she does?
A. Yes.
Q. Where are you employed, Mr. Manzo?
A. C. H. Leavell and Company, El Paso, Texas.
Q. How long have you held that job?
A. Since 1 June 1962.
Q. This month?
A. Yes.
Q. And of course, you were the petitioner in the adoption proceedings that we are talking about today, whereby you adopted Polly Page?
A. Molly Page.
Q. I have done that twice now, Molly Page.
A. Yes.
Q. Now, incident to that, as I understand in the petition, or let me show you the petition that is on file, and it has a signature back on the back, to some affidavits here, acknowledgments signed by you, you signed those?
A. Yes.
[fol. 26] Q. Those are your signatures on this petition?
A. Yes sir.
Q. Now, in the petition here, it indicates, that you make a statement, paragraph VII, that there is no need to give notice or to get the consent, because he, Mr. Armstrong, had failed to support, commensurate with his financial ability for two years, is that right?
A. Yes.
Q. You swore to that fact, didn't you?
A. Yes.

Q. What investigation did you make, independent, on your own, to determine what his employment was, or his income was, or anything concerning his financial ability, or did you make any yourself?

A. No, I made no investigation.

Q. I see. Was the information there, was that what was obtained from your wife, what she told you, or just the fact there had been no child support received?

A. Information was obtained from my wife, and from Mr. Armstrong, Jr.'s mother.

Q. I see. And of course, the fact he had not paid any child support, is that right?

A. That is correct.

Q. When you first married your wife, I believe she stated it was in March, 1960?

A. Yes.

[fol. 27] Q. On the 11th, I believe it was?

A. Yes.

Q. Almost two years to the day after that is when the petition was filed?

A. Yes.

Q. Did you ever discuss the matter with your wife about attempting to collect this child support from Mr. Armstrong?

A. We were ready to receive it, but it was not, and if we had received it we would put it in an account for her education.

Q. In other words if it was paid it would be received?

A. Yes.

Q. There was no effort to see that it was paid?

A. I did not think it was necessary.

Q. I see. Mr. Manzo, to be completely honest about this whole thing, wasn't part of the reason the fact you did want to adopt this child?

A. No question I wanted to adopt the child.

Q. That was part of the reason you did not try to force these payments?

A. I did not think there was any need to, any more than the court had ordered.

Q. And as I say, wasn't part of that reason, you did want this adoption to go through?

[fol. 28] A. Yes.

Q. All right. So of course, I don't suppose—have you ever met Mr. Armstrong before?

A. Never.

Q. This is the first time you have ever seen him?

A. Yes.

Q. So I guess it would be safe to say you don't really know much about him personally, or anything like that except what you might get from other parties?

A. All hearsay.

Q. Let's see if I get it right this time, Molly Page has visited Fort Worth, frequently, hasn't she?

A. Yes.

Q. Was that with the consent of your wife and yourself?

A. Oh yes.

Q. Could you tell the court more or less the frequency, and the duration of those visits?

A. Yes, there were two visits a year, about one month, or a little less, every summer, last summer on her birthday, her birthday being in June, and then about ten days to two weeks over the Christmas holidays, including la[illegible] Christmas. There was another visit scheduled for a month starting the second of June this year, even after the adoption proceedings, the visit was still scheduled, we still wanted it to proceed as in the past, making no change in the previous [fol. 29] relationship between Molly Page and her natural father and grandparents.

Q. Well, do you know, of your own knowledge, whether or not any instructions were given by your wife, that she did not ever wish for Mr. Armstrong, Jr., here, to ever have the child for visitation on his own, but always in the presence of Mr. and Mrs. Armstrong, Sr.?

A. As I recall, early in our marriage, when it was apparent that Mr. Armstrong, Jr., had a break down and had been hospitalized, we felt that for the safety of the child it would be best if she visited her natural father in the presence of her grandparents.

Q. I see. Is it your impression those instructions were given to the Armstrong Srs. by your wife?

A. Yes.

Q. I see, and to your knowledge is that the way it has always been handled?

A. Yes.

Q. Since you have been involved in the situation?

A. Yes.

Q. Mr. Manzo, I will ask you a couple more questions here. Did you in any way furnish Mr. Armstrong here, any notice of these adoption proceedings, I mean affirmative notice, call him, write him, tell him, or anything like that?

[fol. 30] A. No.

Q. Did you ever attempt to get his consent to this adoption in any way?

A. No.

Q. To your knowledge, did he ever give his consent?

A. Not to my knowledge.

Q. I see. You knew where he was living, didn't you?

A. Yes.

Q. During all this time?

A. Yes.

Mr. Boling: We have no further questions. At this time we offer into evidence for the court's consideration, the deposition of Mr. Elmo Irby, that is on file in this court here. I don't know if the court would rather read it?

The Court: I was going to ask counsel at this time, for both sides, I understand there are some depositions in the matter. The court has other matters this afternoon and I—do you believe we can finish the oral testimony and the court could, of course, read the depositions.

Mr. Boling: From my standpoint, I would suspect my testimony might take another hour and a half.

The Court: Other than the depositions.

Mr. Boling: Other than the depositions, an hour and [fol. 31] forty-five minutes.

The Court: Let us proceed then with the oral testimony, and leave the depositions to the last if we can.

Father John R. Leatherbury, having been by the court first duly sworn, to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Boling:

Q. Will you state your full name, please?

A. John R. Leatherbury.

Q. And where do you reside?

A. Fort Worth, Texas.

Q. And you are, as I understand it, connected with the Episcopal church?

A. Been Rector for fifteen years.

Q. And for which church?

A. St. John's.

Q. In Fort Worth?

A. Yes, sir.

Q. How long have you—well, do you know Mr. Wright Armstrong Junior here?

A. About five years.

Q. Do you know his ex-wife who is now Mrs. Manzo, [fol. 32] seated over there?

A. Yes, sir, about the same length of time.

Q. Are you familiar with Molly Page the—

A. Daughter.

Q. —daughter?

A. Yes sir. I have met her on several occasions.

Q. Have you had—in your opinion would you say you have had a close association with Mr. Armstrong?

A. The last three and a half years, very close, yes sir. I have counseled him.

Q. You have counseled him. Did you also counsel Mrs. Armstrong—Mrs. Manzo?

A. On two occasions only.

Q. Father, I will just ask you a couple of questions. Since your observation—have you seen Molly Page in the presence of Mr. Armstrong here?

A. Yes sir, about a year ago.

Q. About a year ago. On how many occasions have you observed that?

A. I think last summer about six or eight I would say, in five years probably ten to twelve times.

Q. Did you have a chance to observe the relationship that existed between Mr. Armstrong and his daughter?

A. On those occasions I did, yes sir.

Q. And what was your opinion and impression you received?

[fol. 33] A. It was a daughter with her daddy, she was very happy. This was at church, at Sunday school time.

Q. Did there seem to be a close relationship or not?

A. Yes sir, I would say so.

Q. Affectionate relationship?

A. I would say so.

Q. And in your opinion was there mutual love there between the two?

A. I think so.

Q. Of course, I suppose that having known Mr. Armstrong that long, you know some of his background?

A. Yes.

Q. Some of the problems he has had. Does he attend your church pretty regularly?

A. He has been teaching in my church school three years in December, sings in the choir. Been singing in the choir the same length of time.

Q. You think that in your opinion he is now an upstanding citizen?

A. Yes sir, I think so.

Q. You think he would be a good father?

A. Sir?

Q. Do you think he could be a good father?

A. Yes sir, I do sir.

Q. Particularly I would like to ask you concerning the [fol. 34] hospitalization of Mr. Armstrong back in, it has been testified to, back in December, I believe, 1959?

A. Yes sir.

Q. Do you recall that incident?

A. Yes sir, I was sent for, he was at St. Joseph's, Roman Catholic hospital at the time, yes sir.

Q. Did you have occasion to observe him, and talk with him, and know some of the background of that hospitalization?

A. Yes sir, a good bit.

Q. In your opinion was he emotionally unstable at that time?

A. He was upset, yes sir.

Q. Would you say from your observation, that was his main problem?

A. At that time I would say so, yes sir.

Q. From your subsequent observation do you think he has overcome those problems?

A. I think he has made great strides, yes sir, I would say they are overcome, yes sir, in a period of three years, yes sir.

Cross examination.

By Mr. Craft:

Q. Mr. Leatherbury, you testified that you have known Mr. Armstrong in your church for the past three years?

A. Yes sir.

[fol. 35] Q. He has taught in the church school?

A. Yes sir, and in the choir.

Q. He has sung in the choir?

A. Yes.

Q. Are you familiar with the various budgets you have for your church, or financial?

A. No sir.

Q. Do you know how much contribution Mr. Armstrong has made to your church in the last three years, financially?

A. No sir, I do not.

Q. To your knowledge—

A. I have a parish of 837 people, about four hundred families, I am not involved in the financial aspect of it.

Q. You are stating under oath, that to your knowledge you know nothing concerning whether or not Mr. Armstrong has made any financial contributions to your church?

A. That is right, I do not know.

Q. Would you tell me who would be in the position, in your church, who would be able to answer that question?

A. Mrs. H. Russell, she is the church secretary, and acting as the custodian of the monies, and Mr. Neil Alexander is the treasurer.

Mr. Craft: Thank you, no further questions.

[fol. 36] Mr. Robert Wright Armstrong, Sr., having been by the court first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. Boling:

Q. Please state your full name?

A. Robert Wright Armstrong.

Q. Senior?

A. Senior.

Q. I see. Where do you reside?

A. Fort Worth.

Q. What is the address?

A. 5803 El Campo.

Q. As I understand it, Wright Armstrong, Jr., seated here is your son?

A. Yes.

Q. What is your position, Mr. Armstrong?

A. I work for the Fort Worth and Denver railroad.

Q. What position do you hold?

A. Vice President.

Q. Mr. Armstrong, is your son now living with you?

A. Yes sir.

Q. There in your house?

A. Yes sir.

[fol. 37] Q. And how long has he been living there with you?

A. Oh, I would have to think, he has been living there ever since his wife left him.

Q. When would that have been, can you approximate?

A. Oh, along, I guess in 1959, wasn't it?

Q. They were divorced in November 1959?

A. That is right. He has been there ever since.

Q. All right, now as I understand, your son was hospitalized in December of 1959?

A. That is right.

Q. Living there at your house, have you had an opportunity to be familiar with his physical and mental and financial structure?

A. Yes sir.

Q. While living with you these past years?

A. Yes sir.

Q. Upon release from the hospital, do you recall approximately when he was released?

A. Oh, I believe it was probably on January 1, he was there during Christmas holidays I remember that.

Q. And as I understand it, he—when he was released he returned to your home?

A. Yes sir.

Q. At that point, from your observation was he—wha condition was he in emotionally?

[fol. 38] A. Well, he was about as near a nervous wreck as I ever saw.

Q. In your opinion was he able to hold employment?

A. Oh, I don't think they would have hired him for a messenger boy.

Q. Did he subsequently gain employment with the city of Fort Worth as Assistant District Attorney, in their traffic department?

A. Yes sir.

Q. Can you tell us how long he held that employment?

A. No I could not, but I would say ninety days, or a hundred and twenty, maybe a little longer.

Q. About three or four months. Do you know what happened to this job?

A. Yes sir.

Q. What happened?

A. Well, of course, I wasn't there, you understand, but my understanding was that he was so emotionally upset he could not interrogate his—

Q. Witnesses?

A. Witnesses, right, and the City Attorney had to let him go.

Q. So, being relieved from that position do you know whether or not he went under a doctor's care again?

A. Oh, yes.

[fol. 39] Q. What doctor was that, was he a Fort Worth doctor or Dallas?

A. We had a doctor in Dallas and I think his name is Dr. McNeal. I believe that is right. His mother found—she found the doctor, his mother took him over there.

Q. All right, Mr. Armstrong, after his job with the city that he had, and he went under this doctor's care, did you furnish him his housing?

A. Yes, sir.

Q. Food?

A. Food and clothing, and all of his lunch money, and everything else, paid the doctors.

Q. In other words you entirely supported him?

A. Yes.

Q. How long did that situation exist?

A. Up until just a few months ago, when he got this new position.

Q. I see.

A. As City Judge.

Q. Is it your opinion he was unable to hold down gainful employment during most of that time?

A. Counsel, he was in such a mental state, that as I said, I don't think anybody would have hired him even for a carpenters job.

[fol. 40] Q. He did finally go into an office—or did he go with another attorney?

A. Yes, we had—he had a fellow by the name of Irby that was one of the best friends I ever thought, one young man to another, he turned his office library room over to him, said to come down there and read law, gave him some place to go, and encouraged him in getting back on his feet.

Q. So it assisted in his rehabilitation?

A. Oh, without that, I don't know what would have happened to him.

Q. Mr. Armstrong, do you, of your own knowledge, know what situation exists as between Mr. Armstrong and his wife, concerning the payment or non-payment of child support?

A. No, I did not. I never tried to run my children's business and he never said anything about it, and I never heard anything about it until this proceeding.

Q. Did Mrs. Manzo ever make any contact with you seeking assistance?

A. Not a thing, if she had she would have gotten it.

Q. Financial or otherwise, or ask you to see why Wright wasn't paying?

A. If she had she would have gotten it.

(Here a letter was marked for identification by the reporter as exhibit R-2.)

[fol. 41] Q. Mr. Armstrong, I hand you what has been marked respondent's exhibit 2, and ask you if you can identify that document?

A. Yes sir, this is the letter Colonel Manzo wrote me, under date of the 27th of April, in which he told me he had adopted the child.

Q. I see.

A. That was the first news the Armstrong family had of this adopting.

OFFER IN EVIDENCE

Mr. Boling: We offer Respondent's exhibit No. 2, into evidence. Is there any objection.

Mr. Craft: No objection.

The Court: There being no objection it will be received in evidence.

Exhibit R-2, being as follows:

"7401 Arnold Drive
Biggs AFB, Texas
27 April 1962

Mr. R. Wright Armstrong
Burlington Lines
Fort Worth Club
Fort Worth, Texas.

Dear Mr. Armstrong:

I have this date completed court action to adopt Molly Page as my daughter and to change her name to Molly

Page Manzo. I initiated the adoption proceedings after completing more than two years of full support for the child. I believe that this action is in her best interest and sincerely hope that you and your family will arrive at the same conclusion.

My adoption of Molly Page need not in any way change her relationship with you and Mrs. Armstrong. We [fol. 42] want her to continue to visit you through the years and love you as much as she does now. She always looks forward to her visits with you. I only request that you avoid pointed discussions on the subject of her parentage in order not to confuse her. I make this request because I have noted the results of this type of discussion following her previous visits in your home.

You will be interested in knowing that I have requested voluntary retirement from the Air Force effective May 31st. I should know within two weeks whether or not my request will be approved. Flournoy and I plan to make our home in El Paso, so we will continue to be fairly conveniently located for Molly Page's visits with you. We will inform you when we have a new address. We have an appointment with the doctor for Molly Page to have her tonsils examined on June 1st. We expect to have her tonsils removed about July 25th. Flournoy and Mrs. Armstrong have exchanged correspondence about Molly Page's visit with you in June. It will be satisfactory to pick her up in El Paso on June 2nd or later, whenever it is convenient.

Sincerely,

(sgd) Sal Manzo
S. E. Manzo"

Q. Mr. Armstrong you have already mentioned that was the first notice, or even idea that you had that adoption proceedings were contemplated, or pending, or had been accomplished?

A. That is right.

Q. Upon receiving that letter what did you do?

A. Well, the first thing I did, I phoned my boy.

Q. Did he know about it?

A. No, I asked him to come up and have lunch with me, and I gave him that for lunch so he couldn't eat any lunch after that.

[fol. 43] Q. Now Mr. Armstrong, as I understand it, you during the bulk of this last two, or two and half years, you have almost completely supported your son?

A. Yes.

Q. To the extent of, as you put it, his laundry, food, lunch money?

A.. Oh, yes.

Q. What about even say, hair cuts?

A. Yes sir, paid all his barber bills.

Q. Now, from your observation of him there in your home, I think you have already commented on it, but it was your opinion he was not able to hold down gainful employment during say, the bulk of 1960?

A. I would make that as strong as I could. As I told you, in my business, a messenger boy is the lowest thing we hire, and I don't think he could have been a messenger boy, because he couldn't remember that long.

Q. Now, Molly Page, as I understand, made several visits up to your home there?

A. Oh, yes.

Q. And have you had occasion to observe her in the presence of your son?

A. Oh, yes.

Q. In your opinion did there appear to be a close association between them?

A. I thought they were very close, very close, the last time she was there she insisted on sleeping with him every [fol. 44] night, she would not let him get away from her.

Q. Seemed to be a close father-daughter relation?

A. I thought so.

Q. Mutual love and affection between the two?

A. That is right.

Q. As I understand it, Mr. Armstrong, there has been some indication, when arrangements were first made as to visitation, they were made between, as I understand, you and Mrs. Manzo initially, is that right?

A. As I remember it that was right.

Q. Did she give you any instructions as to starting this visitation in your home, as to allowing your son here to visit with her alone; what were the instructions as you recall?

A. I don't think she ever gave me any particular instructions, she was—she wanted to be sure the child would be with my wife and myself, as I understand it, and then when I assured her that would be right, we would take care of the child, then she would not let the child come until we told her the day we would send her back home. That was about the only instructions I recall about it.

(Here a letter was marked for identification by the reporter as exhibit R 3.)

[fol. 45] Q, Mr. Armstrong, I hand you a handwritten letter, do you recall that letter?

Q. Was that received by you?

A. Yes, I am "Bo Paw".

Q. That was received by you?

A. That is right.

Q. Who wrote that letter?

A. Fleur.

Q. That is Mrs. Manzo?

A. Mrs. Manzo, that is right.

Q. That, I don't believe is dated, can you approximate when you received that letter?

A. No, I can't.

Q. Was it at the beginning of the visits?

A. No, this was before the child came.

Q. For the first visit?

A. For the first visit This letter was received—the first letter we had from her after she re-married the Colonel.

Q. This was the first letter you received from her after she re-married the Colonel?

A. That is right.

Mr. Craft: I desire to object to the introduction of this evidence, because of the lack of materiality to the issue in question as to whether or not the father had financial capa- [fol. 46] city to support the child two years immediately preceding the adoption.

The Court: Well, the court can't tell whether it would have any bearing. (Here the exhibit was submitted to the court.)

Mr. Boling: We offer it now, your honor.

The Court: The court will over rule the objection.

Mr. Craft: I would like to note an exception please.

Exhibit R-3, being as follows:

"Dear Bo Paw,

As you probably know Wright and I have had an exchange of letters regarding Molly Page visiting all of you in August. From her standpoint, it is an ideal time for her to go, and I know she will enjoy herself.

Before verifying with Wright that Molly Page is coming, I would like to discuss several matters with you, and hope that I may have your assurance and word regarding my requests.

1. In order not to have a mix-up on when and how long she is to stay—as we had Christmas—would you mind being responsible for seeing that she is picked up August 8th and returned August 29th? (I had planned to send her the first week in August; but Sal has had several unscheduled conferences that are to be held this month, so our leave will not terminate until August 6th. Molly Page's child development school that she likes so much begins August 31st; hence, the pickup and return dates).

2. Since Wright is working, and also the fact that I have received unsolicited reports that he is not quite himself yet, I am somewhat concerned for her well-being. Therefore, I would like to know that you and Mamaw will be in Fort Worth during her entire visit.

On receiving your assurance on the above two requests, I will notify Wright that Molly Page may be [fol. 47] picked up August 8th.

Sincerely,

Fleur.

By the way, Molly Page is the bell of the swimming pool set, in the bathing suit and cap that you sent.

P. O. Box 356
Cloudcroft, New Mex.
Phone: Mutual 26061"

Q. Mr. Armstrong, in connection with your son's condition, would you say—how would you characterize his condition after his release, was it a physical thing or emotional thing or both, or what was it?

A. I would say it was certainly emotional, certainly emotional.

Q. Do you think he has overcome that problem, his emotional problem now?

A. Well, don't you think the results show that. The same people who he was employed by, were willing to bring him back, give him a better job than he had, and they have certainly—he has certainly made good in that job.

Q. In your own opinion are you convinced he is completely rehabilitated?

A. I would say he has rehabilitated all right, and the folks he works for think so, and incidentally, I might add that—I would like to add this, his parents had nothing in the world to do with getting him the job, he got the job himself.

[fol. 48] Q. On his own ability?

A. On his own ability, through his own friends.

Q. Mr. Armstrong, have you ever had occasion to observe whether or not, say during the years 1960 and 1961, whether or not your son ever made any direct contributions to the girl, in the way of clothing and things of that nature?

A. Well, can I take this just as observation, without any basic thing about it. I know this, when the child comes to see us in Fort Worth, he always took her out, entertaining her. I know he bought some clothes and things the last time she was there, and maybe the others, but I do know the last time she was there he bought her some clothes, but I am not—but if you asked me about what he actually spent I could not tell you.

Q. You know he has, but the amount you don't know?

A. That is right.

Q. And of course, I suppose you and your wife always show her a good time when she is there?

A. We sure did.

Q. Bought her clothes and things of that nature?

A. I didn't counsel, buy her any clothes, but grandma always took care of her.

Q. She always handled that part of it?

A. That comes under the head of her business.

[fol. 49] Q. Was grandma liberal in that respect?

The Court: Counsel, that is getting into—

Mr. Boling: I believe that is all.

(Here three instruments were marked by the reporter for identification as exhibits P-4, P-5 and P-6.)

Mr. Craft: I have had marked for identification purposes only, exhibits P-4, P-5, and P-6.

Mr. Boling: No objection.

Mr. Craft: I would like to introduce into evidence petitioners exhibits P-4, P-5 and P-6.

The Court: No objection, they will be received in evidence.

Exhibit P-4, being as follows:

"R. Wright Armstrong
Fort Worth, Texas
700 Fort Worth Club Building
May 8, 1962.

My dear Colonel:

Acknowledgment is made of your letter of April 27th.

First, may I wish you much happiness, good health and prosperity in your retirement. To say further that if the Good Lord and the Burlington will keep me until December 31st of this year, I will join you in retirement.

As to the future status of this sweet, beautiful, lovable little girl, Molly Page—the real subject of our correspondence,—the observation is made that your action will deprive this child of some future opportunities, which she might well enjoy at no grat sacrafice on your part.

Certainly we can both agree that the little girl has no responsibility for any of the acts which could bring you to such a decision. The child has never suffered from lack of love or physical care. There has always been a welcome home for her at 5803 El Campo Terrace, Fort Worth.

[fol. 50] Commenting on the second part of the second paragraph of your letter—You have presented to me an accomplished fact—that Molly Page is no longer Molly Page *Armstrong.* I judge from your letter that you wish to have the knowledge of her parentage kept from her. I assume you have given serious consideration to the grave responsibility which attaches itself to such a course. I am told that other children in similar circumstances have harbored deep resentments against their benefactors after finding out in later years that they have been deceived—resulting in much unhappiness for all parties concerned.

You, who have served your country so long and honorably, and I, who have had the great privilege of service to it in two major conflicts (both on a volunteer basis) know a great deal about the "honor system", so certainly you would not expect me to lie to anyone, especially to a little girl, whom I love with my life.

As the grandfather of this lovely child, my deep and only real interest is in her future happiness. With my knowledge of the past history of this case, I would be less than human if I were not concerned about the prospects for the future stability of her home. You should not blame me for wondering if the Court passed judgment on this important question without full knowledge of all the circumstances.

I pray (but dare not hope) that you will tell her of the deep love and affection of her blood grandparents and their family, as she grows up to be the beautiful, useful woman we know she will be.

Again returning to the military, may a very, very old soldier wish an old soldier farewell.

Sincerely,

(sgd) R. Wright Armstrong

Colonel S. E. Manzo
7401 Arnold Drive
Biggs Air Force Base, Texas."

Exhibit P-5, being as follows:

"7401 Arnold Drive
Biggs AFB, Texas
9 May, 1962

[fol. 51] Mr. R. Wright Armstrong
700 Fort Worth Club Building
Fort Worth, Texas

My dear Mr. Armstrong:

Your letter of May 8th has been received.

I thank you very much for your good wishes on my retirement and return the same to you when you retire on December 1st. I feel very fortunate to be starting a new career as a Vice President of C. H. Leavell & Company, a general contractor and construction engineering firm. My family and I are looking forward to our new life with great anticipation.

Needless to say, I was much concerned about your letter, but I certainly understand your initial reaction to the news contained in my previous letter. White it is not my intention to try to change your opinion, I feel impelled to correct a misunderstanding which is apparent.

In my request that you "avoid pointed discussions on the subject of her parentage," I did not care to go into detail on the results of the "indoctrination" which

Molly Page has received in your home, I feel certain without your knowledge. I had hoped it would not be necessary. Be assured that in our home, whenever the subject comes up, Molly Page is made fully aware of her grandparents in Fort Worth and their deep love for her, as she is of her father in Fort Worth to whom Flournoy and I refer to as "Daddy Wright". We do not tell her anything but the truth and never will.

However, when she has returned to us from visits with your family on more than one occasion, she has informed me that "Ma-Maw says you are not my Daddy and I can have only one Daddy". This is the type of *pointed* discussion designed to turn the child away from me which I requested be avoided. I see no need to bring up the subject with Molly Page in your home any more than we do in our home. If *she* brings it up, of course I would want her to be told the truth. However, I doubt if the initiative in these discussions has been hers. Therefore, I believe your mention of the "honor system" to me was uncalled for as was the implication that I would want you to lie to Molly Page.

[fol. 52] Your closing paragraphs had a note of finality about them implying the termination of the relationship between our families. If this is your wish, I respect it. The decision is yours.

Sincerely,

S.E.Manzo"

Exhibit P-6, being as follows:

"WESTERN UNION
TELEGRAM

LB086 DA 382
D FWB485 CAK FAX FORT WORTH TEXAS 28

347P CSI 1960 JUL 28 PM 3 48
MRS. SALVATORE MANZO
POST OFFICE BOX 356 CLOUDCROFT NMEX
OKEY REGARDS
R WRIGHT ARMSTRONG."

Here court recessed for fifteen minutes, after which time the following proceedings were had:

Mr. Robert Wright Armstrong, Sr.

Corss examination.

By Mr. Craft:

Q. Mr. Wright, you testified with regard—

A. My name is Armstrong—

Q. Excuse me, Mr. Armstrong.

A. —if you don't mind

Q. No, sir. You testified with regard to letters exchanged between Colonel Manzo and yourself following notification by you—to you by Colonel Manzo—

A. Yes.

Q. —of the adoption?

A. That is right.

[fol. 53] Q. And the letters that have been received into evidence are the two letters of exchange, one from you to him and the other is a reply to you; and do you recall from your letter exchange whether or not the arrangements for continued rights to visitation were acquiesced in by the Colonel?

A. Would you let me see the letters to be sure they are the letters?

Q. Yes, show you exhibit P-4, dated 8 May 1960?

A. That is the letter I wrote him?

Q. Yes?

A. Yes sir, that is okay.

Q. This is the letter, purports to be to you, dated 9 May, from Colonel Manzo, this is marked P-5?

A. Yes.

Q. You did receive this letter?

A. I did receive that letter, you bet.

Q. The other item is P-6, which is a wire reply to Colonel Manzo's request concerning the interchange of visitation—of their visitation rights of Molly Page?

A. Could I correct this, the letter I had was from Mrs. Manzo.

Q. The wire I have introduced, that was introduced was from Mrs. Manzo to you, and this is your reply?

A. To Mrs. Manzo, that is right.

[fol. 54] (Here two telegrams were marked for identification as exhibits P-7 and P-8.)

Mr. Craft: These have been marked for identification purposes only, as P-7 and P-8.

Mr. Boling: No objection.

Exhibit P-7, being as follows:

"WESTERN UNION TELEGRAM

LB073 DB300 1960 JUL 27 PM 3 10
D FW A550 CAK AR FAX FORT WORTH TEX
27 345 P CST

Mrs. Salvatore Manzo
Post Office Box 356 Cloudcroft NMex.

Your nice wire 25th from El Paso on my desk awaiting me this morning on arrival from Denver. Maw Maw will be glad to pick up Molly Page August 1 arriving El Paso Teepee No 7 due to arrive 12:50 Peem and will return on Teepee No 8 due to leave El Paso 3:25 Peem. Molly Page will stay at our house and Maw Maw will see that she is taken care of. Please confirm if this is agreeable so that she can make her arrangements.

R. Wright Armstrong"

Reverse side:

Mr. R. Wright Armstrong
Burlington Lines
Ft. Worth Club
F W Tex.

Arrangements fine to pick up Molly Page Aug 1st except your wire did not confirm she would be returned to me in El Paso not later than Aug 29th arrangements confirmed when I receive this assurance from you. We will meet train. Wire me Cloudcroft.

Flournoy"

Exhibit P-8, being as follows:

"WESTERN UNION
Sending Blank

Fort Worth, Texas
July 28, 1960

Mrs. Salvatore Manzo
Post Office Box 356 (50-50 Wren Place-Cottage)
Cloudcroft, New Mexico.
Okey, regards

R. Wight Armstrong.

[fol. 55] Mail copy Mrs. Salvatore Manzo—7401 Arnold Dr. El Paso, Texas. For your information there is no one at home that understands our private communication agreement. So when you see Maw Maw act as though you made these arrangements through your attorney and Rice Tilley in Fort Worth. I believe this is much better in the long run for all concerned. If you think differently it is perfectly agreeable for you to tell what you like but we made the deal and up to now as far as I am concerned. R. Wright Armstrong".

Q. I would like to direct your attention back again to exhibit P-6, and ask you with regard to the identified P-8, and see if you recall having mailed this copy?

A. Sure.

Q. To Mrs. Manzo?

A. It is genuine.

Q. P-7 is the original received by Mrs. Manzo from you?

A. That sure is.

Q. And ask you if on the reverse side in pencil, is a wire which you received, in terminology?

A. I don't know if that is what we got?

A. But in general terms?

A. Yes, sure, that is right.

Q. According to that exchange of telegrams then you and Mrs. Manzo remained on good terms with regard to an agreement between the two of you as to how the Molly Page visitation rights and privileges would be continued?

A. No, I would not say that, but let's don't have any misunderstanding about the relations between Mrs. Manzo and me. As far as I am concerned they are very fine, just like [fol. 56] they always were.

Q. All right, sir. Mr. Armstrong, the question primarily in issue here, is the financial ability of your son to provide money support for his child during the two year period from March 11, 1960, through March 12, 1962. You have testified your son, during this period, resided with you?

A. That is right.

Q. He also received from you everything that he needed?

A. That is right.

Q. During this period, did you have knowledge of the fact the court decree had adjudged that he should pay $50.00 a month to the support of his daughter, Molly Page?

A. Not during this time. At the time that the divorce was granted it was my understanding they had settled on something like $50.00 a month.

Q. During this period of March 11, 1960 through March 12, 1962, did Mr. Wright Armstrong, Jr. at any time request you pay, for or on his behalf, any money to Molly Page?

A. He did not.

Q. Did he, during this same period of time, ever ask you to pay for, or on his behalf, any other debts which he owed?

A. No he didn't, but I did pay quite a few of them.

[fol. 57] Q. You voluntarily paid other debts?

A. When the debtor would get to the old man, sometime why I would pick up a few of them, not many.

Q. But at this same time you knew your son had a legal obligation to pay $50.00 a month to the support and maintenance of his daughter, Molly Page?

A. Yes, and a note at the bank, Union National Bank and Trust bill, and many other debts.

Q. But at no time did Mr. Armstrong, Jr., ever ask you help him pay this?

A. No, I don't think in his mental condition, I don't think it ever occurred to him, he was just in a wave of desperation.

Q. You testified that at a point in time during this period that he was not capable of even being a messenger boy?

A. I sure did.

Q. At what time during this period, did he finally get qualified so he could have been a messenger boy?

A. Well, during the last few months.

Q. How long would you say, two months?

A. Oh, five or six months.

Q. Would he by December of 1961, have been capable of taking employment as a messenger boy?

A. Yes, if it wasn't too heavy.

[fol. 58] Q. Did he undertake to become a messenger boy, or any other gainful employment at that time?

A. No, because it is my understanding, and I never met this doctor in Dallas, never met him to this day, but it is my understanding the doctor urged him to return to something he liked to do like his law business, he had to do that and not try to be a messenger boy or bricklayer or something else.

Q. Did Mr. Armstrong, Jr. ever work for the FBI?

A. Yes, one time I think so.

Q. Was that in the early fifties, for a period of approximately two years?

A. I can't tell you the dates, but he worked for the FBI.

Q. What was his condition when he came home after having worked for the FBI, with regard to emotional stability?

A. His emotional stability was all right. He came home on a vacation from the FBI and while he was there he met an old family friend, who was a lawyer, and he said "Wright, what do you want to stay in the FBI for, why don't you join, or become my partner". That was the reason he stayed home, he went into partners with a man by the name of McGhee, who has passed on, and formed the firm of McGhee and Armstrong.

Q. You do not recall ever having carried on any conversations about the fact he returned from the FBI as ner- [fol. 59] vous wreck?

A. No, no.

Q. What did cause the nervous wreck that you spoke of, and hospitalization in December and January of 1959, December 1959 to January of 1960, what brought this about, over-work, over-drink, over-sex life, or what brought it on?

A. I could not tell you about the last two counsel, but he was emotionally upset, I think almost from the time he was married, he kept getting more, could I say, emotionally unreliable.

Q. Would you consider it was a hereditary trait?

A. I could not say that and be his father.

Q. Could you say then, if it wasn't hereditary, he undertook to do something to himself which brought about this nervous condition?

Mr. Boling: Your honor, I have allowed him to go along on this, I don't see what he is trying to get from Mr. Armstrong, he is trying to confuse him, if he could pinpoint it a little better.

Mr. Craft: He has testified he put out a considerable amount of money, he—certainly he knew if it wasn't hereditary what would bring about the condition he had—

The Court: What the nervous condition was, I don't know that makes any difference or how it came about—

[fol. 60] Mr. Craft: If it please the court, I am trying to indicate to the court that this was something that was self induced if he had no capability to gain employment, as a result of having taken dope and alcohol—

Mr. Boling: I object to those remarks like that going into this record, there is absolutely no evidence—

The Court: Counsel, I am afraid you will have to be rather pointed in your questions, and not testify concerning matters—let's get along with the questioning.

Mr. Craft: I apologize to the court and counsel, and Junior Armstrong and Senior Armstrong.

Q. I am merely trying to ask Mr. Armstrong, was the nervous condition brought about by the excessive use of alcohol?

A. I would not think so, I would think that the alcohol came from his emotions.

Q. Did he spend large sums of money, or a considerable amount of money, prior to his divorce, prior to December 1959, for the consumption of alcohol?

A. I can't tell you how much he spent, but he spent money. He drank, don't deceive yourself of that, if that is what you want me to say.

Q. You testified Wright Armstrong, Jr., during the last visitation of Molly Page, spent money for clothes and took [fol. 61] her to various places of entertainment; do you know where he got the money for this purpose?

A. Yes, some of it was from his mother, and I gave him some, and I think he got some from some of his ambulance chasing cases, maybe ten or fifteen dollars.

Q. You testified he was employed by the City of Fort Worth during the period of February to July, or approximately in those dates, and that he received remuneration for this employment; do you know what he did with his money, since he did not contribute any to his own support and maintenance as you testified?

A. I could not tell you that.

Q. He did make some money?

A. He did get some money.

Q. You indicated he has been employed since February of 1962, February, March and April of 1962, is this correct, to the best of your knowledge?

A. I can not tell about the dates Counsel, whatever he will swear to that would be right.

Q. Now then, this was also for gainful employment, as Corporation Judge?

A. Just Police Judge.

Q. Police Judge. Do you know what he did with his money from February, March and April, or since he has been Police Judge?

[fol. 62] A. Yes, I know some. He has been quite proud to have gotten some of his creditors off his back, as he did work for the city, and had he not cleared up some of these accounts he probably could not have held this employment.

Q. Do you know whether one of his debtors that he—or one of those he cleared up, was back support money to Mrs. Manzo?

A. No, I do not.

Q. Does he own a 1962 automobile now?

A. I don't know if he owns it or not, I think he has one, he is probably paying on it.

Q. When did he take possession and start having and using this, and operating it, in your presence, at your house?

A. I can't tell you.

Q. Do you know whether it was before Christmas of 1961?

A. I am sure it is since then.

Q. Would it be as early as March, 1962?

A. I don't think it has been over thirty days ago.

Q. Did he ask you, or obtain from you, any money for that purpose?

A. No.

Q. Did he cash in or surrender any of his life insurance policies for that purpose?

[fol. 63] A. I don't know, I don't think he had any life insurance policies. I think during the latter part of his marriage, and after his wife left him—I think he told me—I asked him the other night and he said he lost it all, he said something about fifty thousand dollars, he told me—I had no idea he had anything like that. Of course, it wasn't paid up you understand, they spent all the money from all that, and that is gone.

Q. Did you have any conversation with him concerning his purchase of his car while he still had not paid you anything for support and maintenance for a couple of years?

A. Counsel, you know what a father is good for, don't you, to pay the debts.

The Court: Mr. Armstrong, if you will just answer the questions and not question counsel.

A. No, sir.

Q. Do you know whether or not Wright Armstrong, Jr., attends church frequently or regularly in the community?

A. I think he does. He leaves the house every Sunday morning early, and he teaches Sunday school class, I understand, and sings in the choir of the Episcopal church.

Q. Has this been for the period of 11 February 1960 through the 12th of March, 1962?

[fol. 64] A. I can't tell you the dates, counsel, but I think his former wife took him over to that church. He is a methodist ordinarily.

Q. Did you have any reason to contribute to the church where he attended, for and on his behalf, since you paid all other expenses for him?

A. No.

Q. Do you know whether he contributed to the church?

A. No sir, I do not.

Q. Do you know who he currently is married to?

A. Is he married?

Q. Do you know whether he is married or not?

A. No, no. You give me a great surprise.

Q. Do you know who he is currently engaged to?

A. No, sir.

Q. Do you know who he is currently dating?

A. No, sir.

Q. Does he operate from your house?

A. Yes sir. He can't be dating very many people because the boy is there most every night, when I am in town, I can't say when I am not in town, but he is not away from the house when I am there a night a week.

Q. Who purchased his clothing while he was living in your home for this two year period, before you received notification of this adoption?

[fol. 65] A. Mr. and Mrs. Armstrong.

Q. Did you purchase them from fine quality stores as you would purchase for yourself?

A. Well, yes, I would say so. I think he bought his clothes—the last suit he bought from Bonds.

Q. Have you purchased for him any records of any type, since he likes stereo and records?

A. Yes sir, I have, as late as day before yesterday, the first records I ever bought for him in my life, I gave him six records for his birthday.

Q. Do you know whether Mr. Wright Armstrong, Jr., has drawn on any savings to finance this trial?

A. No sir, I don't.

Q. Do you know whether Mr. Wright Armstrong, Jr., is paying for this trial?

A. I don't know who is paying for it.

Q. You, Mr. Wright Armstrong, Sr., are not paying for this trial?

A. I haven't yet.

Q. I see. Excuse me.

Mr. Boling: I want to interrupt, I don't see the relevancy of all this questioning about what is happening right now, who is paying for this trial.

The Court: The court will over rule the objection.

Q. You made mention of the fact you were carrying on a [fol. 66] conversation with your son, and you were amazed to find out he had approximately fifty thousand dollars worth of life insurance at one time?

A. About the time he married, yes.

Q. Did you have any discussion as to how much money he borrowed against his life insurance?

A. No, I did not.

Q. Mr. Wright Armstrong, Sr., do you recall the purchase of a piece of property in Fort Worth, during the marriage of ex-Mrs. Armstrong and Armstrong, Jr., the last piece of property, that piece of property which they held about the time of the divorce?

A. You mean—How do you mean? Did I have anything to do with them purchasing the property.

Q. Do you remember or recall?

A. They bought a home, very nice little house.

Q. Do you recall how the down payment was paid for on the house?

A. No sir, I do not.

Q. Do you recall whether you and your wife jointly or individually, either one, contributed as much as five hundred dollars for the down payment, as a gift?

A. No, I gave five hundred dollars to them as a wedding gift, they could spend it for anything they wanted to.

Q. Do you know whether that went into the down payment of the house?

[fol. 67] A. No sir, I do not. Her father gave them five hundred and I gave them five hundred.

(Here an instrument was marked for identification as exhibit P-9.)

Q. I have marked for identification purposes only petitioner's exhibit 9. I show you a letter, Mr. Armstrong?

A. These various letters of mine.

Q. Yes sir. Marked P-9, dated the 12th of January, 1960, and ask you if you recognize this as a letter which you wrote?

A. I would have to read it.

Q. Would you mind checking the second page and see if that is your signature?

A. Oh yes, that is my signature. Let me look at it. Maybe that will teach an old man not to write letters, won't it?

OFFER IN EVIDENCE

Mr. Craft: I would like to introduce this letter into evidence.

The Court: Being no objection it will be received in evidence.

Exhibit P-9, being as follows:

"R. WRIGHT ARMSTRONG
FORT WORTH, TEXAS

January 14, 1960

[fol. 68] My dear Fleur:

Thank you for your recent letter.

This will bring you up to date on Wright, Jr.'s, condition. Think I told you that when they brought him home from the hospital, he came to our home, under such protest, however, that was the only way the doctors would let him out of the hospital. So, he consented to come.

This was on Friday, January 1. On January 4 I was asked to come to Chicago by our President to attend a Board meeting. So, the minute I packed my grips and left town, he demanded that his mother take him over to your house, where he could see some things there. Much to her surprise, he took his grip. When they got there, he told her he was going to stay, regardless of what the doctor or anyone else said.

Shortly before he came home from the hospital, someone with the Cement Company telephoned me about the company automobile. When they suggested that it either be turned back to them or I personally be responsible for it, I took the car immediately to the garage and notified the local office where the car was. It has since been moved to Dallas.

Wright, Jr.'s, mental condition was such that I felt it would be an injustice to him as well as the public to allow him to drive. So, I have held up giving him his driver's license, for which I am sure if he should become normal he will be grateful.

Things have been going from bad to worse. He would not see any of his family and hardly anyone else, but has been to the doctor several times. I believe they have now just about concluded that physically he is all right, although they have sent the pictures they took of him in the hospital to several specialists, including Mayo's.

Last Monday, January 11, they had him with a doctor from the U. S. Hospital here and gave him some tests. I believe these will be repeated this afternoon.

Under all the circumstances, the Cement Company concluded, I understand, that it is hardly fair to them to keep him any longer on their payroll. They have taken him off, effective either the first of the year or the 15th, but I am not sure of the date, although I believe [fol. 69] they told him he still has an indefinite leave of absence and that as soon as the doctor will give them a letter of complete recovery, they will find a place for him.

We are glad that it was agreeable with you to dispose of the house. In view of the local situation around here, I think you were very fortunate to get out with the small loss, as only yesterday the Pure Oil Company announced they were moving their headquarters from Fort Worth. This will affect about 150 families. While others will be moving in, you just don't absorb that many homes, together with the others that have transferred, overnight.

Wright, Jr. talks about getting him an apartment. That may be the best thing for him to do, but after he has absorbed the Cement Company's decision, he may decide that the best thing for him to do is to return to the old home for a temporary period.

Of course, as you know, I am picking up the note at the Bank (found out that he was 4 months behind in his payments) as well as some other bills, (insurance, Parking tickets, etc.)

The loss of the baby through Christmas was quite a blow at our home, but in light of subsequent events, it was probably all right. I will endeavor to keep you advised of the local situations in which I feel in some instances you may have interest.

Yours very truly,

(sgd) Bo Paw
R. Wright Armstrong

Mrs. R. Wright Armstrong, Jr.
3110 Federal St.
El Paso, Texas"

Q. Sir, in that letter, can you refresh your memory, did you speak of anything concerning the mental condition of your son, as of the writing of that letter, which would indicate you had necessity for not permitting him to have a driver's license at that time?

A. I did not read that part, but I guess I did, because I wouldn't let him have a driver's license at that time, right.

[fol. 70] Q. Throughout the two year period prior to your receiving notification of this adoption, you have testified as a fact then, you have supported and maintained your son, and that throughout this period you did not feel that he had income sufficient to warrant any contribution to his daughter, Molly Page, is that correct?

A. Well now, you are asking from me?

Q. Yes, sir.

A. I am just observing, I don't think he had any money to speak of at all.

Q. Did your husband ever suffer at all for any wants, any necessity?

A. My husband?

Q. Your son, excuse me. Did your son ever have any wants himself, for food or clothing?

A. Oh, no.

Q. Anything at all?

A. No, if he did it would be his own thinking, it was there for him.

Q. Did you actually contribute the money necessary for your son to purchase items of wearing apparel, if any, for Molly Page, during visitations?

A. I could not pin point it I gave him money for Molly Page, but I gave him money, and if he spent it on her, that [fol. 71] was all right.

Q. So to your personal knowledge he did not have any money to contribute for Molly Page, even when she was visiting there with you?

A. To my personal knowledge, no.

Q. So, if she came back from Fort Worth after her visits there, with dresses, shoes and dresses and other items, then these were actually your contributions directly or through your son?

A. I could not say that, I could not say that because I did not pack her grips, and I think you ought to know that in my house, I am just kind of the writer of checks.

Q. Your testimony is he did not have any money?

A. He did not have much money, as far as I know, let's put it that way.

Q. One question in summation; would you try to tell this court how much money you and your wife had actually had to contribute, put out of pocket, for your son, during the two year period before you received notification of the adoption?

A. I have no idea.

Q. You have no idea whether it was a thousand dollars, or twenty-five thousand?

A. It would not be twenty-five thousand I assure you that. If it is important to the court I could go back and [fol. 72] check my bank accounts, I could give you some idea if it means anything, but it wasn't twenty-five thousand, I can assure you that.

Q. Sometime people live by, set up a specific allotment per month, did you have any amount per month you gave your son?

A. No, we never had that at our house.

(Discussion before the court here omitted.)

Here court recessed until 2 P. M. June 22, 1962, when the following proceeds were had:

Mr. R. Wright Armstrong, Jr. have been by the court first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Boling:

Q. State your full name, please?

A. Robert Wright Armstrong, Jr.

Q. And where do you live, Mr. Armstrong?

A. 5803 El Campo, Fort Worth, Texas.

Q. What do you do?

A. I am Corporation Court Judge, City of Fort Worth, Corporation Court No. 2.

Q. How long have you held that position?

A. Since the second week in February.

[fol. 73] Q. What year?

A. This year, 1962.

Q. 1962. Mr. Armstrong, you are the one that has filed this motion for a new trial here, right?

A. Yes sir.

Q. And these proceedings?

A. Yes.

Q. As I understand, you were at one time married to Mrs. Manzo that has testified in this cause earlier?

A. That is correct.

Q. You were divorced from her, when?

A. November 6, 1959, I believe.

Q. November 6th?

A. '59.

Q. I show you petitioner's exhibit No. 2, which has been introduced in evidence, judgment out of the 9th District Court, Tarrant County, Texas, is that the judgment in the divorce between you and your wife?

A. Yes, sir.

Q. All right, at the time of this divorce where were you employed?

A. At the time of my divorce?

Q. Yes.

A. I was employed by Trinity Cement Company.

Q. There in Fort Worth?

[fol. 74] A. They had an office in Fort Worth, and headquarters in Dallas.

Q. What was your title and capacity, with that company?

A. Sales representative.

Q. And following your divorce, how long were you employed by that company?

A. Following my divorce?

Q. Yes.

A. For about another month.

Q. About another month. What were the circumstances surrounding the termination of that, voluntary, or what happened there?

A. I was taken off the payroll because I was so emotionally disturbed I could not continue on and do a good job for them.

Q. Did they ask you to resign?

A. Yes.

Q. I mean, that was the effect of it?

A. That was the effect of it, yes sir.

Q. I see. Now, there has been some testimony about your hospitalization, being hospitalized; when did that occur?

A. That occurred before Christmas in 1959. If I had to guess it would be the 21st or 22nd of December.

Q. How long were you hospitalized?

[fol. 75] A. Approximately fifteen days. I was there both Christmas and New Years.

Q. Upon your release from the hospital, were you given any instructions by your doctor?

A. Upon my release I was instructed to go home with the folks and stay there.

Q. By the way, who was your doctor?

A. Dr. Gordon Kelley.

Q. There in Fort Worth?

A. Yes.

Q. As I take it then, you were not employed at that time?

A. No, I was not.

Q. Did you follow his advise?

A. I went home, yes sir.

Q. Now, would you explain to the court, the circumstances of that hospitalization, to your knowledge, of your own knowledge, as to what caused the hospitalization; what did the doctor call it?

A. The doctor called it I believe, a convulsion, I collapsed completely and was taken to the hospital in an ambulance.

Q. Upon your release, would you describe to the court what your condition was?

A. I was very weak physically, very tired, very fuzzy minded in my thoughts, I had a very difficult time concentrating on any one thought for any extended period of time.

[fol. 76] Q. I see. When was the next employment you had?

A. The next employment after that, was with the City of Fort Worth.

Q. When was that?

A. That was in February, the exact date I am not sure of, latter part, I believe, of 1960.

Q. 1960?

A. Yes, sir.

Q. In what capacity did you go to work for them?

A. As Assistant City Attorney.

Q. While you were working for Portland Cement before you were asked to resign, what was your net pay, or take-home pay, from that concern?

A. My net pay would be around $250.00 every two weeks.

Q. Approximately $500.00 a month?

A. Approximately, yes sir.

Q. Now this employment you took with the city of Fort Worth, what was your take home pay there, were you paid monthly or were you paid twice a month?

A. I was paid every two weeks.

Q. Every two weeks. Do you recall the approximate amount of the check you received every two weeks?

A. Approximately $150.00 or $160.00, it was somewhere—that was the take-home pay.

[fol. 77] Q. That was your take-home pay?

A. Yes.

Q. How long were you employed by the city of Fort Worth as Assistant City Attorney?

A. Around four months, three or four months.

Q. Could you explain to the court the circumstances of the termination of that employment?

A. I was unable to hold the job down, I was unable to do the job and—in that I could not concentrate long enough to successfully try a case, or remember enough of the facts to carry on the many duties involved in the actual trial of a case. Finally the City Attorney called me into his office, and asked me to take some time off and get my emotions straightened out.

Q. In fact, as I understand then, the City Attorney called you in and asked you to resign?

A. Yes.

Q. Who was the city attorney at that time?

A. S. Gordon Johndroe.

Q. Is he still the city attorney there?

A. Yes, sir.

Q. Now, following that, did you have any other medical care?

A. Following that I went to see a doctor in Dallas.

Q. What is his name?

[fol. 78] Q. Arch McNeill.

Q. Prior to going to him, and since you were released from the hospital, when you were released from the hospital in January, 1960, I believe you said, until May or June as you indicated, during that period were you also under the care of a doctor?

A. Yes, sir.

Q. Who were those doctors?

A. Well, I was still more or less under the care of Gordon Kelley, then in addition to that I was going to see Dr. Robert Holmgren there, he is a psychiatrist.

Q. How long did you stay under the care of this Dr. McNeill in Dallas?

A. Stayed under the care of Dr. McNeill for around seven or eight months, perhaps a little bit longer even.

Q. Following your termination of your employment with the city, did Dr. McNeill give you any—prescribe any activities, or direct you in any way?

A. Dr. McNeill thought it would be much better if I went back to work in a field I enjoyed, and could gradually gain my strength, both physically and mentally through the therapy of engaging in activities I enjoyed. He urged me to go back to the practice of law.

Q. Based on that, were arrangements made to do that?

A. Yes, they were.

[fol. 79] Q. With whom were arrangements made?

A. With Elmo Irby.

Q. Who is he?

A. An attorney in Fort Worth.

Q. When did you go into Mr. Irby's office?

A. Sometime in July of 1960.

Q. July of 1960.

And how long did you remain in his office?

A. Well, I remained in his office until I took this job this year as City Judge.

Q. Since the second week in February, 1962?

A. Yes sir.

Q. Now, under the direction of the various doctors, particularly Dr. McNeill, and following his advise, did your situation improve?

A. Yes it did, slowly.

Q. Slowly. Do you feel now that you have recovered—completely recovered from this situation, and your problem?

A. Yes sir, I do.

Q. When do you think you fully recovered your capacities in that connection?

A. I think I fully recovered my capacity, sometime the latter part of last year.

Q. Of 1961?

A. Yes, sir.

[fol. 80] Q. I see. During the period of January of 1960, say until—through the summer and fall of 1960, in other words the bulk of the year of 1960, were you able either physically or mentally, to hold down competent employment, gainful employment?

A. No sir, I wasn't.

Q. Now, while you were in Mr. Irby's office, what was the nature of your activities; what did you do there?

A. For the most part I assisted Elmo in any way I could, in briefing various cases, I did some appellate work under him, and running errands down to the courthouse, such as if he had some papers he wanted to file, and pick up papers, and get judgments signed, and various things of that nature.

Q. I see. What was your arrangement with him as to the office there, in the way of expenses and that sort of thing?

A. There were no expenses for me, he allowed me to utilize the office space and the use of his stenographic help, and also his office supplies and his library, and I was to pay him nothing.

Q. I see. Was there any arrangement as to salary of any kind?

A. No, he also paid me nothing as a salary.

Q. Were you able to have your own practice there while [fol. 81] you were with him?

A. I am sorry.

Q. Were you able to have your own practice in his office while you were there?

A. Yes, if I was able to get anything, I was able to have some, yes.

Q. I mean, there was no objection to it?

A. Only to certain types of cases.

Q. Certain types he did not want in the office, would not handle?

A. He did not care about me handling any criminal work or divorce work.

Q. Those two were the only exceptions I believe?

A. Yes.

Q. Anything other than that he had no objection?

A. That is correct.

Q. During the year 1960, while you were with Mr. Irby—when did you say you went with him now?

A. Sometime in July, 1960.

Q. Between the time you were asked to leave the city job, and when you went into Mr. Irby's office, were you employed anywhere?

A. No, sir.

Q. Were you primarily under the care of Dr. McNeill at that time?

[fol. 82] A. Yes sir.

Q. Now, the balance of the year, from July to the end of 1960, while you were in Mr. Irby's office, do you know what income you made from your own law practice?

A. From my own law practice I did not make a nickel.

Q. How long had it been since you had practiced law, at the time you went there in his office?

A. It had been around six years.

Q. You had no clientel, I mean?

A. Absolutely not.

Q. Could you estimate about what your income was during that period, July through December, 1960, from your own practice?

A. I had none.

Q. None that you know of?

A. No, sir.

Q. Now, did Mr. Irby ever pay you anything during that period?

A. Yes sir, he paid me, if I am not mistaken, he paid me $50.00 for looking after the office while he was gone on vacation.

Q. That was during the summer of 1960?

A. Yes sir. Then during December, if I am not mistaken he gave me $30.00 or $40.00, if I am not mistaken, on some [fol. 83] little case I had done some appeal work on.

Q. He contributed a little money there to you then?

A. Yes.

Q. How much did you make from Mr. Irby, during the period of July to—through December, 1960?

A. Well, that is just about it, as to my memory.

Q. It would be approximately what, a little under a hundred dollars?

A. Yes sir, whatever that adds up to.

Q. As I understand it, the only income you had from the period of July through December 1960, is what Mr. Irby paid you?

A. That is correct.

Q. All right, now starting in 1960, of course, you still had the same arrangement with him, right?

A. Yes.

Q. In fact, the whole year of 1961?

A. Yes sir.

Q. You had no other employment, I mean steady employment, other than there in his office?

A. No other steady employment, no sir.

Q. Now, during the year 1961, did your practice pick up any?

A. It picked up in that I had some, as opposed to none.

Q. I see. Do you know what your income was from your [fol. 84] own law practice, during the year 1961?

A. It could not have been more than $200.00 during the whole year.

Q. It was not more than $200.00?

A. Could not have been more than that.

Q. Now, during that period, do you recall whether Mr. Irby, whether he paid you anything?

A. Yes sir. Now, the exact amounts once again I can't trust my memory. At one time I believe, during June, he paid me $140.00 on an old account that we had years ago that he just cleared up, and later, during the course of that summer, latter part of the summer, he paid me $75.00 for handling an adoption for him, while he was gone on vacation.

Q. You say $140.00, and how much?

A. Later $75.00.

Q. $75.00, about—whatever that totals?

A. Whatever that totals up.

Q. Did you receive any income from any other source during 1961?

A. Yes, sir, from time to time. I began to fill in as substitute judge of the corporation court, if one of them would either be ill, or take a trip or take a vacation.

Q. Was that occasioned by the city attorney there, Mr. Johndroe?

A. Yes sir, it was.

[fol. 85] Q. Did Mr. Johndroe appear to be interested in your recovery and your activities, and how you were doing?

A. Yes, he said more than once how proud he was of my recovery.

Q. Now, during the year 1961, can you tell the court what your income—you received from standing in temporarily on different occasions for the corporation judge there?

A. Somewhere in the neighborhood of six or seven hundred dollars.

Q. As I understand it then, your gross income for the year 1961, would have been approximately what, about nine hundred dollars?

A. Around eight or nine hundred dollars, yes.

Q. Now, following 1961, and starting in 1962, what occasioned the vacancy; if there was a vacancy, for this judgeship you now hold?

A. Judge Gil Martin, who was the senior judge, retired, actually a little bit ahead of his time, in order to run for the Probate Judge.

Q. How are the corporation court judges acquired there in Fort Worth, are they elected, appointed, or how do they do that?

A. They are appointed by the city council.

Q. By the city council?

A. Yes, sir.

[fol. 86] Q. I see. Now, how did it come about your name came up for this job?

A. I was—the city council asked both the senior and junior bar over—

Q. I mean before that though, I mean did you have any conversation with the city attorney?

A. Oh yes, prior to that time the city attorney had mentioned that he hoped to have that job for me, upon the retirement he wanted me to have that job.

Q. Was he convinced you were able to hold it down, and fully recovered?

A. Yes.

Q. Did he suggest to you the taking—I mean, in other words, throwing your hat in the ring, so to speak?

A. Yes he did, and keeping myself available.

Q. All right, incident to that do you know what the city council did?

A. The city council asked for recommendations from both the senior and junior bar of Tarrant County, to fill this job.

Q. Did they make a recommendation?

A. Yes, they did.

Q. Do you know what the recommendation was?

A. Both the junior and senior bar recommended me for the job.

[fol. 87] Q. All right. Do you know whether or not they were ever asked to make additional recommendations?

A. Yes, they were.

Q. And do you know whether they did or not?

A. They did not. They told the members that had asked for additional names, they were satisfied with the name they had recommended, and did not care to add any more names.

Q. Now, incident to that, were you appointed to the bench?

A. Yes, I was.

Q. Do you know what the vote of the city council was?

A. By unanimous vote.

Q. I believe I understood you to say that actually took place the second week in February?

A. Yes sir.

Q. Mr. Armstrong, concerning this child support, as you know, the court decree there ordered fifty dollars a month child support; did you ever make any of those payments?

A. Yes, I made a payment January—I made a payment in 1959, it was the next month after the divorce was granted.

Q. That would be December?

A. In December, I believe.

Q. 1959?

[fol. 88] A. Yes sir.

Q. I see. Did you make any subsequent payments after that?

A. Subsequently, in the month of February, 1960, I made a payment of $150.00.

Q. And that brought you up to date then?

A. As far as I knew it did, yes.

Q. In other words from—in February you paid $150.00, you had paid $50.00 in December?

A. Yes sir.

Q. Now, have you paid any more child support, through the child support office in Tarrant County?

A. No sir, I haven't.

Q. Now, the time you were hospitalized there in Fort Worth, was your ex-wife present at any time?

A. Yes sir, we were in the house together when I collapsed.

Q. What were you doing out there?

Q. I was helping load some books and boxes for them to move.

Q. What was that incident to, why were you out there loading books?

A. We had divided up the community property, and she was moving out what had been agreed upon was her property.

Q. Now, at the time that agreement was made, who all was present out there at that time that agreement was made?

A. Elmo Irby was present, and Win Hooper.

Q. And were you present?

[fol. 89] A. Yes sir, and Mrs. Manzo.

Q. I see. Now you are speaking now, as I take it, of the physical property in the house there, the furnishings and that sort of thing?

A. Yes sir.

Q. And was there a physical split made of that property?

A. Yes sir.

Q. And on what basis was it to be split, do you know?

A. Fifty-fifty.

Q. Now, she has testified that the truck that was out there was fully loaded at the time you had your seizure, is that correct?

A. No, it was not correct.

Q. When you had your seizure, as I understand it, you had to go to the hospital in an ambulance, I believe you testified?

A. Yes.

Q. Did she visit you in the hospital?

A. She took me to the hospital, she was there when I got there.

Q. All right now, subsequent to the hospitalization, did you receive any word concerning the physical effects out in the house?

A. Yes, I did.

Q. Having received that word, what did you do, if anything?

[fol. 90] A. I asked Elmo to go out and look at the house.

Q. Elmo Irby?

A. Irby, yes sir.

Q. Did he go out there?

A. Yes he did.

Q. Did you subsequently go out there?

A. After I got out of the hospital, yes sir.

Q. What did you observe when you got out there?

The Court: Counsel, what is the importance of this business about the community property and division and so forth.

Mr. Boling: We are trying to lay the foundation for what this agreement was, particularly as to the community assets, I think we will get it tied in a little bit later.

The Court: The divorce decree settled the community property business, and it has no bearing here on anything.

Mr. Boling: As I understand the divorce decree, there was no disposition made in the decree, other than the agreement of the parties, and I am trying to bring out what the agreement was.

Mr. Craft: If it please the court, we have in our possession, and are ready to present, a copy of the signed property settlement if it becomes a proper item.

The Court: I can't see the importance of it counsel, at [fol. 91] this time, unless perhaps you have the cart before the horse. I do not know.

Mr. Boling: All right, your honor.

Q. Now, concerning the house, when was the house sold?

A. The house was sold in February, I believe.

Q. In February of 1960?

A. Yes sir.

Q. And were the proceeds to that house distributed?

A. Yes sir, they were.

Q. Who handled the sale of that house?

A. Fred Crusenan.

Q. And how much did you realize from the sale of that house, what was the total amount of cash?

A. It was I believe, slightly in excess of a thousand dollars.

Q. All right, and what was your understanding, how that was to be divided?

A. Fifty-fifty.

Q. Was it divided that way?

A. No sir, it wasn't.

Q. Why wasn't it?

A. I requested that the majority of the money be sent to my ex-wife for the benefit of the child.

Q. All right, was that done by Mr. Crusenan?

A. Yes sir, it was.

[fol. 92] Q. Do you know approximately how much she derived out of that?

A. Somewhere in the neighborhood of eight hundred and seventy-five dollars, somewhere slightly above that, I believe.

Q. I see. And that left you approximately how much?

A. A hundred and fifty or sixty dollars, something like that.

Q. All right. Now, at the time of your divorce, did you have any community debts?

A. Yes sir.

Q. And what amount were those community debts?

A. Oh, they ran as high as four thousand dollars.

Q. I see. Now, have those now been paid?

A. Yes sir, they have.

Q. By whom?

A. By me.

Q. Solely by you?

A. Yes, sir.

Q. Now, did your father ever pay any of them?

A. Well, he did help me take care of the note at the Fort Worth National Bank, he was on that note with us.

Q. He was co-signer?

A. Yes.

Q. So he did pay off the balance on that?

[fol. 93] A. Yes.

Q. You know approximately how much that was?

A. That ran, I believe, sixteen or seventeen hundred dollars. I believe we paid it down from twenty-four hundred down to that, I believe that was the balance.

Q. Now, the balance of the debts would be approximately what, twenty-two hundred dollars, something like that?

A. Something like that.

Q. Have you managed to pay all of those?

A. Yes sir, I have.

Q. Where did you get the money to pay those?

A. From the—well, from the money I made while I was on a salary with the city attorney, that short period of time.

Q. That was in 1960, February to May, in there?

A. Yes sir. With the money I received from the city while I was filling in as substitute judge.

Q. That was in 1961?

A. In '61.

Q. Now, in that connection, when you were with the city as assistant city attorney, I believe you stated you made approximately three hundred a month, could you tell the court where your first two pay checks went?

A. In order to close the sale of the house, I had to pay two back house payments which ran to $232.00 and also [fol. 94] pay for the insurance for a year, which ran somewhere around $78.00.

Q. Now, to whom did you pay that?

A. I paid that to Fred Crusenan. He paid it initially out of his own pocket in order to consummate the sale at an earlier date and I paid him out of my first checks.

Q. That was $232.00 for back house payments, and approximately—

A. $78.00 for insurance for the year.

Q. All right; and the subsequent money you received as assistant city attorney there, that was what was applied to community debts?

A. Yes, sir.

Q. Now, there has been testimony that Molly Page has had periodic visits to Fort Worth, in the presence of you and your folks, is that right?

A. Yes sir, that is true.

Q. In 1961, let's say, for instance, did she visit during that summer?

A. In 1961. That was last summer, yes sir.

Q. She did. At that time did you contribute anything to her directly?

A. Yes sir, I bought her some clothes, I bought her lots of toys, and they had a production on at the Casa Manana of the Wizard of Oz, which is for children, and I took her to that. She, I think, thoroughly enjoyed herself. As a [fol. 95] matter of fact she memorized the entire—

Q. How much did the cost of these clothes and things run?

A. During the summer of 1961 it ran in the neighborhood of Seventy-five dollars.

Q. Was that money given you by your father, or money you had earned?

A. That was money I had earned.

Q. From whom?

A. From Elmo.

Q. Had he just paid you?

A. I had just gotten that check for a hundred and forty something dollars.

Q. I believe they indicated she visited again this last Christmas?

A. Yes.

Q. At that time did you contribute anything to her directly?

A. Yes sir, I took her to a clothing store and purchased three dresses and a purse for her for Christmas.

Q. What was the cost of those?

A. The cost of that was $50.00.

Q. Was that your money?

A. That was my money.

Q. How about prior, say in 1960?

A. In which one, the summer or Christmas?

Q. Say Summer of 1960?

A. Well, I did not have any money of my own then.

[fol. 96] Q. Just did not have any at all?

A. No, sir.

Q. Now Mr. Armstrong, since your divorce, did you have any insurance policies that had any cash value which could have been surrendered, or—

A. No sir, not one.

Q. Did you, at one time, have insurance policies?

A. When I got married, I had insurance policies in the amount of fifty-five thousand dollars.

Q. What happened to those policies?

A. Through the course of the marriage they were borrowed on until finally they were just all lost.

Q. Did you have any savings account, or any cash of any kind, at the time of your divorce?

A. No, sir.

Q. It has been brought up Mr. Armstrong, are you married?

A. No, I am not.

Q. Are you engaged?

A. No, sir.

Q. Are you dating?

A. Maybe once a month, maybe once every two months, I stay home most of the time.

Q. Anything serious there?

A. Absolutely not.

Q. Now, at the time you have indicated you talked to [fol. 97] the City Attorney there in Fort Worth, Mr. Johndroe, about going on as full time judge, at that time, did you still have any community debts?

A. Yes, I did.

Q. Would you explain them?

A. I still had some left on a bank note—pardon me, at the Union Bank and Trust Company—

Q. That note was incurred prior to the divorce?

A. Yes.

Q. How much was owed on it, say this first of last February?

A. It still had about four hundred dollars due on it.

Q. Was there any arrangement made between you and Mr. Johndroe concerning that obligation?

A. I promised Mr. Johndroe, I would take care of this with my first pay check as soon as I got it, so there would be no way for the city to be embarrassed on something like that.

Q. Was he concerned about that?

A. Yes, he was.

Q. Did you go along with that agreement?

A. I certainly did.

Q. Did you then pay it off?

A. Yes, sir.

Q. It has been indicated you now own an automobile, I believe it is a Pontiac?

[fol. 98] A. Yes.

Q. When did you buy that Pontiac?

A. In the latter part of March.

Q. Of this year?

A. Yes, sir.

Q. When was the first payment due upon it?

A. Latter part of May.

Q. In other words you just made your first payment on it?

A. Yes.

Q. Did you make any down payment?

A. No, sir.

Q. Did you trade anything in?

A. No sir, I have never owned a car.

Q. This is the first car you have owned?

A. First car I have ever owned.

Q. Also Mr. Armstrong, concerning the money you make now—by the way, what is your income now?

A. I get $239.44 every two weeks.

Q. Take-home?

A. Take-home pay, yes sir.

Q. Approximately five hundred dollar?

A. Yes.

Q. After you paid off that note, out of your first check as you indicated you paid off that bank note out of your second check—of course these are every two weeks, I am [fol. 99] talking about on a monthly basis, the second month, could you explain to the court where that money went?

A. I had, by the very nature of the job I had to more or less improve my personal appearance. I purchased very little in the way of clothing in the last three or four years, all my ties were soiled, I needed shirts, socks, a pair of shoes I needed, and I just felt it was necessary—

Q. To maintain your position?

A. To maintain the job I had.

Q. Now Mr. Armstrong, when Molly Page had been up there to visit, have you had a close relationship with her?

A. Very close.

Q. She show love toward you?

A. Yes sir, in every way.

Q. And you to her?

A. Yes sir.

Q. I suppose it is what you would call a father-child relationship?

A. Yes sir.

Q. Do you love your child?

A. Very much, I would not be here today if I did not.

Q. You feel you are now physically and mentally in position to maintain consistent gainful employment?

[fol. 100] A. Yes sir, I do.

Q. Mr. Wright, did you ever at any time, consent for your child to be adopted?

A. Never.

Q. Was your consent ever sought by anyone, for the adoption of your daughter?

A. No, sir.

Q. Were you ever advised by anyone in any way, of the pendency of this adoption proceeding?

A. No, sir.

Q. Were you ever served with papers?

A. Never.

Q. When was the first notice you had there was anything concerning the adoption of your child?

A. The first notice I had was when my father called me up and asked me to have lunch with him. When I got to his office he showed me the letter he had received from Colonel Manzo.

Q. Is that the one he identified here previously, I hand you here respondent's No. 2, and ask is that the letter you are speaking of?

A. Yes sir.

Q. That is the letter your father showed you, and that was the first notice you had of any adoption?

A. That was the first notice.

[fol. 101] Q. And, of course, that was after the action, wasn't it?

A. Yes sir.

Q. What did you do upon receiving that?

A. Upon receiving the letter, I gave a good deal of thought to what I considered, or what was going to be, what I thought the best interest of the child, and I not only gave it a great deal of personal thought myself, I discussed it with a number of people, whose opinion I valued very highly, one of whom being Father Leatherbury, one Bill Janolonski, and also with Dr. Foster, a child psychologist.

Q. After having considered it yourself, and discussed it with these other people, did they make any advice to you on the matter?

A. They advised me.

Q. Not what they advised, did they give you advice?

A. Yes, they did.

Q. Did you follow that advice?

A. Up to the letter so far.

Q. All right, and as I take it then, you filed these proceedings for a new trial, is that right?

A. Yes sir.

Mr. Boling: I think that is all.

[fol. 102] Mr. Craft: We technically have not yet received into evidence the deposition of Elmo Irby?

The Court: I understood they were being offered to the court for introduction, and the court would receive them in evidence and read them.

(Discussion here omitted.)

All of the depositions were here considered as a part of the record in this case, and are attached to and made a part of this statement of facts, properly identified by the reporter.

Cross examination.

By Mr. Craft:

Q. Have you, Mr. Armstrong, had an opportunity to read the deposition taken by an attorney in Fort Worth, from Elmo Irby, from Mr. Irby?

A. Yes sir.

Q. In that deposition, at page 5, Mr. Irby testified: "On December 28, 1960, out of collections from some accounts of the bankrupt Jack Caudle Company, I paid him $47.42, and then in July of 1961, $75.00 from Byron Darling adoption, and that's all the money that I paid to him." This is talking, in addition to some other money which had been previously accounted for. You recall handling the Byron Darling adoption?

A. Yes sir, I do.

[fol. 103] Q. In what manner did you handle this, take over from Elmo Irby, or did you handle it from its inception?

A. Oh no, all I had to do was get the people down to the courthouse, everything had been accomplished up to that, let's say it was just a matter of getting signatures.

Q. You are an attorney?

A. Yes.

Q. At that time you were qualified, this is December 28, 1960, you were a qualified attorney, and you did go in and present this adoption case to the court?

A. I did not do that in December, 1960.

Q. Excuse me, July, 1961?

A. Yes sir, I did.

Q. And you are familiar with the provisions of paragraph—section 46a of the Texas Annotated Statutes, with regard to adoptions?

A. If you are asking me if I am familiar from memory, I would have to answer, no I am not.

Q. As an attorney, and with your memory having been refreshed as late as July 1961, concerning the necessity for notice and consent for adoption, and the necessity for support of the minor child by the natural father, where a court decree has adjudicated and decreed that payment must be made, did you have knowledge of the fact you [fol. 104] must continue paying in accordance with the court decree, for a continuous period, so that at no time would you have two years total elapse without payment?

Mr. Boling: Your honor, I don't know if that is a correct statement of the law.

The Court: Well, I will permit him to answer the question. The court will be the judge of the law.

A. I wish you would repeat that question, since we have gotten into it.

(Here the question was read to the witness.)

A. This adoption case, of course, was in no way similar to the one in question here. This business of support I haven't had anything to do with that, as a matter of fact I am still not familiar with that law as a law. I would have to look at the book, as I stated before, all the paper work had been accomplished prior to my taking them up there, it was just a matter of having the judge sign, I did not even have to do any briefing.

Q. As to my pointed question—

A. Yes, sir.

Q. —is it not a fact you knew you had a responsibility to pay fifty dollars, each and every month until age eighteen, in so far as Molly Page Armstrong was concerned?

A. I was aware fifty dollars a month had been placed in [fol. 105] the decree, divorce decree, yes sir.

Q. Did you know, at the time you received any money, particularly in the—throughout the period from the date that Mrs. Manzo married, which was 11 of March, 1960 on up until the 12th of March, 1962, which you have notice now, when we filed the adoption, did you know that you were responsible for getting from any source that was available to you, the fifty dollars a month to the child support of Molly Page?

A. Part of that I thought I had paid.

Q. I would like for you to answer the question, whether you knew you had a fifty dollar a month responsibility, to pay each and every month, by a particular date?

A. I was aware of the fifty dollars yes sir, the fifty dollars a month.

Q. Your testimony before this court has been that on various months throughout this entire two year period, you did receive remuneration of some type or other in excess of fifty dollars during some months?

A. That is correct, yes sir.

Q. At no time did you, during this period pay any of this fifty dollars a month, five dollars a month, or any other part, to the support and maintenance of the child Molly Page, as decreed by the 96th Judicial District Court of [fol. 106] Tarrant County, Texas?

A. That is incorrect, because I have already testified—

Q. During this period 11 March 1960, through the period of 12 March 1962, you never did pay, as ordered by the court, into the Tarrant County Clerk, Mr. Nichols—

A. Echols, no sir.

Q. As ordered by the court?

A. No, sir.

Q. At any time did you ever receive notice from Mrs. Armstrong, or Mrs. Manzo, during this period that the child needed any clothing, dresses or otherwise during her visitation with your parents?

A. In an indirect way, yes sir.

Q. In your own mind you actually thought the child proceeded over to visit with you and your mother, with all of the clothing she actually possessed, did you?

A. I don't know. She got there with very little clothing.

Q. Did you ever correspond with, or communicate and see, whether or not any clothing which you purportedly purchased was actually what she needed, and was actually in the way of support, as against additional clothing which she had no need for?

A. I assumed it was needed, it certainly was needed for the visit, I assumed that was what was wanted.

Q. You could not send any money to her mother through [fol. 107] the court as ordered, through the clerk, as ordered, but you could purchase clothing which you did not know whether she needed or not?

A. Now, I did know she needed it, at least for the visit. This was only on two occasions I believe I have testified to.

Q. But you had $75.00 to spend on your daughter, during the visits?

A. Yes sir, I did.

Q. You are an attorney?

A. Yes, sir.

Q. And you had a court order, dated 6 November, 1959, directing you pay fifty dollars per month, each month, into the clerk of the court, and you knew that?

A. Yes sir, I knew that.

Q. You have referred to the purchase of a home during the marriage to Mrs. Manzo?

A. Yes sir.

Q. You have also testified to the subsequent sale of that house?

A. Yes sir.

Q. And the disbursement of the money?

A. Yes sir.

Q. You testified that Fred Cusernan, on your behalf, sent some eight hundred plus dollars to Mrs. Manzo?

[fol. 108] A. Yes, sir.

Q. Then Mrs. Armstrong, perhaps?

A. Yes sir.

Q. Can you tell this court how the money was derived—you heard your father this morning indicate he contributed a gift of five hundred dollars for the down payment, Mrs. Flournoy Armstrong's parents contributed five hundred dollars for the down payment; do you recall what the total down payment was, and where that other difference came from?

A. I don't recall what the total down payment was.

Q. You do not recall?

A. No, sir.

Q. At the time of the contemplated divorce, did you enter into a property agreement, property settlement, which would be adhered to in the event ultimately a divorce was obtained?

A. I don't recall any agreement except our division in the presence of these attorneys.

(Here an instrument was marked for identification R-10.)

Q. I have what is marked for identification purposes only, P-10, which is signed by you, and which purports to be a property agreement entered into between you and—

Mr. Boling: Your honor, I object to the remark he is making, who it is signed by and what it is—

The Court: Just ask the witness if he can identify it.

Mr. Boling: May I see it.

[fol. 109] (Here the instrument was submitted to counsel.)

Mr. Craft: Do you have any objection to the introduction of this into evidence?

The Court: It hasn't been identified yet.

Q. Can you identify your signature on the next to the last page of this document which has been marked P-10?

A. Yes sir.

Q. That is your signature?

A. Yes, sir.

Offer in Evidence

Mr. Craft: I would like to introduce into evidence, a document which is marked P-10, which indicates it is a property settlement agreement between R. Wright Armstrong, Jr., and Flournoy D. Armstrong, it was signed by Flournoy D. Armstrong and R. Wright Armstrong, Jr., on the 6th day of November, which is one and the same date as the judgment of the 96th Judicial District Court awarding the divorce.

The Court: Any objection to its introduction?

Mr. Boling: No objection.

The Court: No objection, it will be received in evidence. Exhibit P-10, being as follows:

[fol. 110]

"PROPERTY SETTLEMENT AGREEMENT BETWEEN
R. WRIGHT ARMSTRONG, JR. AND
FLOURNOY D. ARMSTRONG

STATE OF TEXAS :
COUNTY OF TARRANT:

KNOW ALL MEN BY THESE PRESENTS:

R. Wright Armstrong, Jr., and Flournoy D. Armstrong are now husband and wife but are permanently separated and do not intend to live together as husband and wife at any time in the future. A suit by Flournoy D. Armstrong for divorce from R. Wright Armstrong, Jr. is now pending in the 96th District Court of Tarrant County, Texas, being Cause No. 16544-F on the docket of said Court, and an early trial and disposition thereof is anticipated. The parties desire to settle and adjust their property rights and to divide and partition their properties so that in the event that a divorce be granted it shall not be necessary for the Court to determine such property rights. They therefore do hereby contract and agree between themselves and with each other as follows:

1.

Each party has heretofore taken physical possession of substantially all of his personal effects and all personal property owned by him as his separate property prior to the parties' marriage. In the event that either party now has in his possession or under his control any personal property of the other which is that party's separate property, he shall make such property available to the other upon demand, in the event that a divorce be granted in the above mentioned suit.

2.

During their marriage, the parties occupied as their home the residence located at 6853 Middle Road, Fort Worth, Texas. Two Thousand Five Hundred Dollars

($2,500.00) of the down payment for such property was paid out of the separate funds of Flournoy D. Armstrong. In the event that a divorce be granted in the above mentioned suit, such property shall be sold within a reasonable time for the best available offer, taking into consideration the condition of the real estate market, and the net proceeds, if any, therefrom shall be pro rated between the parties proportionate to the separate interest of Flournoy D. Armstrong therein and the community interest of the parties therein. The parties hereto shall execute any instru- [fol. 111] ment necessary or desirable to consummate such sale.

3.

In the event that a divorce be granted in the above mentioned suit, all Federal income taxes on income received by either or both of the parties during the calendar year 1959 shall be borne by each party as his own separate tax in the proportion of his share of the income. Any and all 1959 estimated tax installments paid by the parties prior to their separation as set forth in the petition for divorce, shall be applied, share and share alike, to the tax of each party.

4.

It is expressly agreed that the obligations to be performed by R. Wright Armstrong, Jr. as hereinabove set forth, shall be accepted by Flournoy D. Armstrong in full, final and complete payment, satisfaction and discharge of all her right, title, interest and claim in and to the community estate of herself and R. Wright Armstrong, Jr. and that other than the right to enforce the performance of the obligations assumed by R. Wright Armstrong, Jr., under the terms hereof, Flournoy D. Armstrong shall not have and shall be forever barred from asserting any other or further right, title, claim or interest in, to or against the community estate of herself and R. Wright Armstrong, Jr.

IN WITNESS WHEREOF the parties have executed duplicate copies of this Agreement this 6th day of November, 1959.

WITNESSED:

(sgd) WINFRED HOOPER JR.

(sgd) signature illegible

(sgd) FLOURNOY D. ARMSTRONG

(sgd) R. WRIGHT ARMSTRONG, JR.

STATE OF TEXAS :
COUNTY OF TARRANT:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Flournoy D. Armstrong, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

[fol. 112] GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of November, 1959.

(sgd) WINFRED HOOPER, JR.
Notary Public in and for Tarrant
County, Texas

STATE OF TEXAS :
COUNTY OF TARRANT:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared R. Wright Armstrong, Jr., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given Under My Hand and Seal of Office This 6th day of November, 1959.

(sgd) Marie Griever
Notary Public in and for Tarrant
County, Texas

Ratification

The foregoing property settlement agreement is in all things reaffirmed and ratified by the parties this the 6th day of November, 1959, after the decree of divorce has been granted in the above mentioned lawsuit.

(sgd) Flournoy D. Armstrong
(sgd) R. Wright Armstrong, Jr.

State of Texas :
County of Tarrant :

Before Me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Flournoy D. Armstrong, a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given Under My Hand and Seal of Office this 6th day of November, 1959.

(sgd) Winfred Hooper, Jr.
Notary Public in and for Tarrant
County, Texas

[fol. 113]
State of Texas :
County of Tarrant :

Before Me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared R. Wright Armstrong, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of November, 1959.

(sgd) MARIE GRIEVER
Notary Public in and for Tarrant
County, Texas"

Q. Do you recall that the judgment of the court indicated in addition—you would, in addition to payment of the specific fifty dollars a month, also the property would be distributed in accordance with the property agreement between the two parties?

A. I recall mention of that, yes sir.

Q. Is it not a fact that the property was in fact distributed in accordance with the property settlement agreement you have now seen there and reviewed, marked P-10?

A. Are you speaking of the real estate only, or all of the property?

Q. The question was directed, including all of it?

A. Well then, I would say no, because there is no mention here of a great deal of property which we divided in the two attorneys presence, item by item.

Q. Well, it indicates first, each person is to take physical possession of that which they owned before the marriage, [fol. 114] and then they would split fifty-fifty community property, in so far as personalty was concerned; was that not done?

A. Are you talking about our division, or what happened after I went to the hospital. According to the division with the two attorneys present, it was pretty well divided fifty-fifty.

Q. I don't understand your answer at all.

A. My answer is, a lot of the property that had been agreed to be left at the house for me, disappeared while I was in the hospital.

Q. Is there an inference there that your wife stole the property?

A. I did not mention stealing I don't believe, I said it was taken.

Q. Taken by whom, do you know?

A. I assume my wife.

Q. You don't know?

A. Of course not.

Q. Then I ask you to strike the assumption.

A. I did not mean to create the assumption of theft at all.

Q. According to the property settlement, in so far as the agreed property settlement was concerned, all personal property, the property each of you had, was to go back to the separate individual, is that correct?

[fol. 115] A. Yes.

Q. The division of the personalty which was the result of your common interest during—community property during marriage, was to be divided fifty-fifty?

A. Yes.

Q. And at one point in time, it was divided this way, according to this property settlement?

A. At one time, in the presence of the two attorneys, yes.

Q. Whether or not it ultimately went—to you and Mrs. Armstrong, at that time is a matter of conjecture, whether you ultimately took possession of the division, is a matter of conjecture, whether she got more than her share?

A. Well, no, I am stating she did, from first hand knowledge.

Q. Also it indicates with regard to the real property at 6853 Middle Road, Fort Worth, Texas; is this the home you lived in which ultimately had been sold?

A. Yes, sir.

Q. It indicates that $2500.00 of the down payment for such property was paid out of the separate funds of Flournoy D. Armstrong, is that correct?

A. It could be, I just don't remember that. All I remember is she put something in.

Q. You signed it?

A. Yes, sir.

[fol. 116] Q. And yet, this was separate property, and it states, in the event the divorce be granted in the above mentioned suit, such property shall be sold within a reasonable time, for the best available offer, taking into consideration the condition of the real estate market, and net profits, if any, shall be prorated between the parties, proportionate to their—to the separate interest of Flournoy D. Armstrong therein, and the community interest of the parties therein. The parties hereto shall execute any instrument necessary or desirable to consummate such sale?

So you knew at the time of the divorce that Mrs. Armstrong had twenty-five hundred separate property in it, is that correct?

A. That is, yes sir.

Q. And at the time of disbursement you only disbursed eight hundred some odd dollars to her, is that correct?

A. Well, yes sir, we did not get very much.

Q. You certainly didn't even give her back her separate investment, separate property investment in the house, did you?

A. I consider I did, yes sir.

Q. You are an attorney?

A. Yes sir, I am an attorney.

Q. You think you can specifically set out the separate [fol. 117] property of a married woman in Texas, and then by your own mismanagement of her property, can result in taking it from her?

Mr. Boling: I don't even understand what he is talking about, but I am going to object to it, he is asking a legal question that is up to the court, if he wants to ask about factual matters I don't object.

The Court: I will sustain the objection.

Q. You know your wife had twenty-five hundred dollars separate property invested in the real estate, and she got back only eight hundred and some odd dollars, is that correct?

A. Yes.

Q. Yet you want this court to believe—

Mr. Boling: I am going to object to the question "he wants the court to believe", he should ask him questions.

Mr. Craft: I will withdraw the question.

Q. And yet you state that the return of eight hundred some odd dollars to Mrs. Armstrong, was an advance to her on child support money?

A. I considered it as such, yes sir.

Q. You indicated that the division of personal property at the time of divorce was agreed to by the two of you, and then by implication, if not directly, you stated that [fol. 118] the divorce, for the record, that—

Mr. Boling: Your honor, I want to object here, he is the one that did not want to go into that and the court sustained the objection; now he is coming back by his defense and wants to go into it, if the objection is good for him, I think it ought to be good for me.

Q. Mr. Armstrong, what if anything, did Mrs. Flournoy Armstrong take from among the property division, other than that which was her separate property for her, and her community property.

Mr. Boling: I interpose the objection—

The Court: There is a property settlement agreement. I don't quite understand the relevancy of the question, Counsel. I will sustain the objection.

Q. Mr. Armstrong, you testified you were being employed for approximately $300.00 in February, 1960, as assistant city attorney, is that correct?

A. Not for the whole month, for part of the month, yes sir.

Q. But you were paid every two weeks?

A. Yes sir.

Q. Were you employed for at least two weeks?

A. In February I believe I was, yes sir.

Q. So you gained approximately $150.00 in February of 1960?

A. Yes sir, I would guess that.

Q. It is very important, as you know, because the period in question is whether or not you did or did not contribute [fol. 119] substantially within your capability, from the two year period 11 March 1960 to 11 March 1962. Had you at the beginning, by the 11th of March, 1960, had you used up all of the funds you had earned prior to that date, so that you had no money at all?

A. The 11th of March?

Q. As of the 11th of March, 1960, you had been employed I believe as city attorney for approximately three weeks to a month at the rate of a hundred and fifty dollars every two weeks; my question is, by 11 of March 1960, were you flat broke, so you could not contribute anything to the support of your child?

A. You understand I had to pay $232.00 back house payments, plus $78.00 for house insurance to consumate the sale.

Q. Was that paid as a result of your living in the house for that period of time?

A. No, that was paid just to consumate the thing, the sale of the house, the sale of the house was earlier than that.

Q. In March of 1960, you were employed the entire month as city attorney in Fort Worth?

A. Yes sir.

Q. And you made three hundred dollars, approximately?

A. Approximately, yes.

[fol. 120] Q. Did you contribute any of that three hundred dollars, to the support and maintenance of your daughter, Molly Page?

Mr. Boling: I think we have gone over that, he has indicated he did not, and what he did with it, period.

The Court: The court will sustain the objection.

Q. During the period you were employed as assistant city attorney from February through May, you made approximately one thousand dollars, is that correct?

A. Approximately.

Q. During that period then, you did not contribute anything to the support and maintenance of your daughter, is that not correct?

A. I did not think I owed anything.

Q. Under the adoption in this—granted by this court on record, as a matter of record, the adoption was granted by the court on the 27th day of April, 1962; as of that date how long had you been employed at a monthly salary in excess of five hundred dollars, by the corporation court by the city of Fort Worth?

A. You are speaking of the job I currently hold?

Q. Yes.

A. As of the second week in February of this year.

Q. So, from February through March, or up until the [fol. 121] final date of this decree, you had been employed approximately three months?

A. Yes, sir.

Q. And during that period, each month you received compensation for your labors, of approximately five hundred dollars per month?

A. Yes sir.

Q. For a total of approximately fifteen hundred dollars?

A. A little less than that, since I did not work the whole month of February.

Q. During this period, you did not contribute, in accordance with the court decree, fifty dollars per month, or make any attempt to pay any back support money, is that correct?

A. Yes sir, that is correct.

Q. At any time, from the date of the court decree, in November 1959, to the present time, did you, as an attorney or otherwise, direct some other attorney to petition the court, the 96th Judicial District Court of Tarrant County, to request relief from your responsibility imposed by that court, on that date?

A. No, sir.

Q. You never undertook to remove the legal burden you had?

A. No, sir.

Q. Throughout all of the time that you did have some means of income, you constantly considered it more ap- [fol. 122] propriate to you, to pay off those debts, than contribute to the support of your daughter, is that your testimony?

A. Community debts, yes sir.

Q. Can you offer to this court, any valid reason why, when you had the money, you did not pay fifty dollars a month, or some part of that, to the child support; you have testified you loved her, and wanted her as your daughter?

A. I have testified, of course, I did spend some money on her when she was there on two occasions. The other occasion in which I had any, you understand it was not regular money, it did not come in on a monthly basis, or a weekly basis, or a daily basis, and some months I would get twenty five dollars and some months I would get nothing. It happened one month she was there I managed to received $140.00, and I considered it more appropriate at that time to spend it directly on her. At other times, I still had the bank debt, and it was pressing me very heavily, when I was able to pay as much as fifty or a hundred dollars on that.

Q. You did not mind Colonel Manzo taking care of your legal obligation to support your daughter?

A. I have never had any indication she was in need, except from the empty suit cases.

Q. Now then, you testified that the junior and senior [fol. 123] bar of Tarrant County, went before the city council, by some means, written or otherwise, and convinced the city council they should have a unanimous vote to put you in your current position as corporation court judge, is that correct?

A. I don't think that had a great deal of bearing on the unanimous vote, the city attorney recommended me and got me before the city council.

Q. So by some means the council was convinced you were highly capable, as an individual to assume this job?

A. I had come back, I was on my feet.

Q. You had so convinced them for a sustained period prior to February 1960?

A. 1960?

Q. 1962, excuse me?

A. What they based their judgment on I could not hazard a guess.

Q. Your father indicated this morning, you heard his testimony, that you could not even be a messenger boy, by December 1960, but the conflicting testimony you give now—

Mr. Boling: I object to the remark "conflicting testimony"—

The Court: Ask the witness a question, counsel, without attempting to interpret the previous testimony.

Mr. Craft: I withdraw the question.

Q. Do you know yourself, can you tell this court, what [fol. 124] it was you were doing for the city of Fort Worth, which was sufficient to cause the majority of the junior and senior bar, as well as the city council, to permit you to have this high office by February of 1960—I mean February, 1962, what, prior to 1962, in February, did you do to convince them of your capability?

A. It was not by some single act.

Q. How were you employed, what were you doing?

A. I had no employment, except at times I filled in as Judge, I had just a few ad litem cases.

Q. You demonstrated sufficiently your capability to serve as judge, but you did not do it by making any money?

A. I have testified I made some money during the times I sat in as Judge, yes sir, I was paid.

Q. But that money was paid on a forty dollar a day basis?

A. Yes sir, strictly as a substitute judge.

Q. Your father is employed as—in what manner?

A. He is Vice President of the Fort Worth and Denver Railroad.

Q. At any time during the period of 11 March 1920 to 12 March, 1962, did you ever ask your father for any form of employment in order that you could meet your legal obligation to support your daughter?

A. No sir, as a matter of fact he would not have hired me any way, that should have come up years ago.

[fol. 125] Q. Did you ever seek any form of employment, other than the $40.00 a day, that you received in the latter part of 1961, in the court?

A. I wasn't able to carry on any kind of sustained job for any period of time, I was not physically or mentally capable of doing it.

Q. This is within the four or five month period before becoming Corporation Judge?

A. You gave the period of two years, and I believe you asked that question, that is what I was answering, the two year period.

Q. I want to ask you the question, were you not physically and mentally capable of taking some form of job, during the latter part of the year 1961?

A. During the latter part of the year?

Q. Yes.

A. I handled a few jobs during that part, yes sir.

Q. Were you capable, physically and mentally of handling any form of job in July of 1961?

A. In July, 1961? I believe it was either that month or June, I sat in as assistant judge, for a period of a week, and satisfactorily filled it, I trust.

Q. During this period from July to December of 1961, were you receiving all of your means of support and livelihood from your mother and father in their home?

[fol. 126] A. Yes, sir.

Q. Except for the few times you served as corporation judge, is that correct?

A. Yes, sir.

Q. And you were capable of holding down the job of corporation judge?

A. I did.

Q. And you did not ask for any other form of employment from any other source, is that correct?

A. I was trying to follow the successful advice of the doctor, which was to stay in the field of law, which I enjoyed, and also I had had indications, not only indirect but direct, if I would keep myself available, he had in mind to get me that job on a permanent basis, which he has since been able to do.

Q. Do you know how early in 1961 you were being considered for your current job, if a job could be made available for you?

A. Not real early.

Q. Was it as early as November of 1961?

A. As early as November, 1961?

Q. Yes.

A. I thought—yes sir, I would say as early as that. Mr. Johndroe, asked me, I believe, during that month, to keep myself available.

[fol. 127] Q. Did you through the period of 11 March 1960, until 12 March 1962, contribute anything to the church where you attended?

A. No, sir.

Q. No financial contribution at all?

A. No sir, I spent an awful lot of time out there.

Q. You taught in the church for a three year period prior to now, is that correct?

A. Yes sir, I also taught in the Texas boys choir for nothing.

Q. I see, you could do those for nothing, and did not feel you could teach in any employment gainfully?

A. This was part of the therapeutic treatment which I was endeavoring to employ to keep myself interested and busy. With no business it has been very difficult to stay busy.

Q. You knew you had a legal liability to contribute fifty dollars a month to your dollar (sic)?

Mr. Boling: Your honor, I think that has been asked at least fifteen times.

The Court: The court will sustain the objection.

Q. Do you know how much your parents contributed to your support and maintenance during the two year period of 11 March 1960 through 11 March 1962?

A. I would not have any way of estimating that, no sir.

[fol. 128] Q. You don't know whether it was five hundred, five thousand or otherwise?

A. No, sir.

Q. You did not have any average monthly amount you received?

A. I never received any average monthly as cash, if that is what you are asking, unless it would be lunch money, one day, oh a dollar, and car fare which runs twenty-eight cents I will say.

Q. Did you ever ask your father or mother at any time, for any money to pay off any of your indebtedness?

A. No, sir.

Q. You testified I believe, you paid off in excess of four thousand dollars in debts?

A. With the exception of the seventeen—I believe sixteen or seventeen hundred bank debt which my father paid off.

Q. But from your personal earnings you indicated approximately four thousand dollars, community debts you paid off?

A. Four thousand minus the seventeen hundred, that carried through to this year. I mean I did not complete paying that off until this year.

Q. But during the period in question you did have income of approximately twenty-seven hundred dollars?

A. Let's say on an approximate basis I would say, yes sir.

Q. The depositions which have been received in evidence, indicate you were capable of putting in at least a 1961 [fol. 129] income tax form, and you were going to have that attached and become a part of the deposition; did you do that?

A. No sir, I did not.

Q. The attorney, at the time of taking of the deposition asked you to procure from some source the 1960 income tax form which you submitted, did you do that?

A. I wasn't able to.

Q. Who was it you said had that form and the information in his possession?

A. A friend of mine, he is currently on active duty with the 49th Armored Division.

Q. You remember testifying "my bookkeeper has my 1960 forms"?

A. If it reads that way I probably said it. I sometime refer to him as my bookkeeper.

Q. You testify here you had little or no income, but you had a bookkeeper?

A. Well, you could call it that.

Q. Little or no income—

A. I did not pay him anything for it.

Q. But you had some money coming in and going out and you thought it was necessary to have a bookkeeper?

A. No, not at all, it is just a convenience.

Q. And you did make a sufficient amount of money so you [fol. 130] needed a bookkeeper to make up your income tax form?

A. Once again, it was just a convenience, not a necessity, he was a friend of mine.

Q. Do you recall whether all the income was reported by W2 form, or whether you had some additional income?

A. I believe the majority of it was reported by W2 form.

Q. Why was it you were unable to get your 1961 income tax form, so it could be entered into evidence?

A. I did not keep a copy, and I called over to the Internal Revenue Department, and of course, these depositions were taken on a Saturday, and there was no way to get them, and I still had my job, I had to be there every day, and they said they would not turn it over to anybody without me being there.

Q. Isn't it a fact that your 1961 and 1960 income tax forms show an excess over the income you have testified to here today?

A. I would say no, that is not a fact.

Q. Did you really feel it was necessary for Mrs. Armstrong, now Mrs. Manzo, and Colonel Manzo—did you feel it was necessary for these two people to remind you you had a legal obligation to support and maintain Molly Page?

A. Well, yes sir, I felt like if there was some dire necessity they would have informed me of it.

Here court recessed for fifteen minutes, after which time [fol. 131] the following proceedings were had:

Mr. R. Wright Armstrong, Jr.

Cross examination (cont'd).

Mr. Craft: No further questions of the witness.

Redirect examination.

By Mr. Boling:

Q. Mr. Armstrong, as I understand it, to clear up part of your testimony on these community debts you have spoken of, those were debts incurred prior to your divorce?

A. Yes, sir.

Q. And they were in the approximate amount of four thousand dollars?.

A. Yes.

Q. I believe you mentioned your father was co-signer on one note at the bank?

A. Yes.

Q. And the balance of approximately twenty-two or three hundred you paid that off yourself?

A. Yes sir.

Q. Did that take almost the bulk of your income during those two years?

A. Yes, sir, it did.

Q. Including what you made while you were assistant city attorney?

A. Yes sir.

[fol. 132] Q. On your child support payments, I believe you did indicate you made the November and December, fifty dollar payment in 1959?

A. Yes, sir.

Q. And the January and February payment of 1960?

A. Yes sir.

Q. And now the—what has been marked respondent's exhibit 3, in evidence, here which is a letter from Tarrant County, shows during 1959 you paid $50.00, is that according to your recollection?

A. Yes, sir.

Q. And during 1960 you paid $150.00, during February?

A. Yes sir.

Q. That would be the $200.00 for those four dates, and that corresponds to your recollection?

A. Yes sir.

Q. Now, just one other thing on the house. They have introduced a property settlement agreement, in any event from the proceeds of the sale of the house how was Fred going to split that?

A. Fifty-fifty.

Q. Until you instructed him otherwise?

A. Yes sir.

Q. And while you were living there with your father, did he in effect support you?

A. My father?

[fol. 133] Q. Yes.

A. Yes sir, he did.

Q. He pay your medical bills?

A. Yes sir.

Q. That sort of thing, he did give you car fare and lunch money?

A. Yes.

Q. As I understand it was because, after you paid these community debts there ~~was~~ nothing left?

A. Yes sir.

Q. Mr. Wright—Mr. Armstrong, could you explain to the court the force that was being applied to you by these creditors?

A. It is very difficult to explain how great it is unless you have been in that position, but they called not only me, constantly, but my father and mother constantly, and one time upset my mother a great deal by threatening to attempt to get me disbarred for having these debts.

Q. So you were extremely concerned about them?

A. Yes, I was.

Mr. Boling: We have nothing further.

COLONEL SALVATORE E. MANZO, being recalled, testified as follows:

Direct examination.

By Mr. Craft:

Q. Mr. Manzo, how old is Molly Page?

[fol. 134] A. She will be five years old this month.

Q. How long has she been living in your house?

A. Since our marriage in March, 1960.

Q. Have you learned to love and carry a great affection for your daughter, this girl?

A. Just as though she were my own flesh and blood, yes.

Q. What actually prompted you to decide to adopt and change the name of Molly Page?

A. We have four children living in our home, three of my own by a previous marriage, and Molly Page. My youngest daughter is five, approximately the same age as Molly Page, there is four and a half months difference. They both go to school together, and without any prompting on our part when Molly Page is asked her name, she said she is Molly Page Manzo, this is a natural reaction of the child—

Mr. Boling: Your honor, I am going to object to what is a natural reaction of the child.

The Court: The objection will be sustained.

Q. The child calls herself Molly Page Manzo?
A. This is correct. May I continue the answer?

The Court: No, the court has sustained the objection, Colonel.

Q. Are you gainfully employed now?
A. Yes.
[fol. 135] Q. Is there any doubt in your mind but what you will be able to continue with proper support and maintenance of Molly Page, should she remain your daughter?
A. None whatever.
Q. Is it your desire to maintain her, provide love and welfare and nurture her, as your own daughter?
A. Yes sir.
Q. And you are fully aware of all the responsibilities of a father?
A. Yes.
Q. And you ask this court to retain this judgment granting the adoption of Molly Page?
A. I do.
Q. Did you have any—do you have any motive at all, with regard to this adoption, other than those you have indicated?
A. My motive is purely and simply what I consider the best interest of the child, there is absolutely no selfish motive connected with this action.

Cross examination.

By Mr. Boling:

Q. Mr. Manzo, how old are you?
A. I am forty-four.
Q. How old is your wife?
A. Thirty-three.

[fol. 136] Mr. Craft: I have no further evidence to present.

Mr. Boling: I have just one thing, if I might, from Mrs. Manzo.

Mrs. Manzo, being recalled, testified as follows:

Redirect examination.

By Mr. Boling:

Q. Mrs. Manzo, I am showing you what has been admitted into evidence as petitioner's exhibit No. 3, letter from the Tarrant County child office, showing their records show in 1959, your ex-husband Mr. Armstrong paid $50.00 in November, does that correspond with your recollection?

A. Yes.

Q. And during 1960 he paid $150.00 during the month of February?

A. My memory is different from Mr. Echols, I still contend it was $100.00.

Q. But you don't say his records are incorrect?

A. No, sir.

Mr. Boling: That is all we have, your honor.

[fol. 137] The State of Texas)
County of El Paso)

I, **Robbie M. Smith**, the Official Court Reporter in and for the 120th Judicial District of Texas, hereby certify that I reported in shorthand the testimony introduced on the trial of the foregoing styled and numbered cause, and afterwards the same was reduced to typewriting, and that the foregoing pages numbered 1 through 137, both inclusive, together with the original depositions which were introduced into evidence upon said trial, which are incorporated into this statement of facts, and made a part hereof, contain a full, true, correct and complete statement of all the testimony and evidence introduced before the court at said trial.

Witness my hand, in my official capacity, this 11th day of July, 1962.

Robbie M. Smith, Official Court Reporter in and for the 120th Judicial District of Texas.

We, the parties to the above numbered and entitled cause, hereby agree that the above and foregoing statement of facts, is a true and correct statement of all the facts admitted and all the evidence introduced on the trial of said cause.

Witness Our Hands, this 16th day of July, 1962.

W. O. Craft, Attorney for Petitioner.

W. Barton Boling, Attorney for Respondent.

[fol. 138] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 10245

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

ANSWERS AND DEPOSITION OF ELMO IRBY— Filed June 22, 1962

ANSWERS AND DEPOSITION OF ELMO IRBY, a witness produced on behalf of the Respondent, taken in the above styled and numbered cause on the 14th day of June, A.D. 1962, commencing at 12:00 P.M., before Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, at the offices of McGown, Godfrey, Logan & Decker, located on the Fifth Floor of the Trans-American Building, in the City of Fort Worth, County of Tarrant, State of Texas, in accordance with the agreement hereinafter set forth.

APPEARANCES:

For the Petitioners, Mr. & Mrs. Salvatore Manzo:

McGown, Godfrey, Logan & Decker, By: Winfred Hooper, Jr., Esq., Trans-American Building, Fort Worth, Texas.

For the Respondent:

Ronald Aultman, Esq., 412 Sinclair Building, Fort Worth, Texas.

[fol. 139] AGREEMENT

It is hereby agreed by and between the parties hereto, through their attorneys appearing herein, that the Respondent may take the deposition of Elmo Irby at this time without the service of notice of time of taking said deposition and without the issuance of a commission thereon, said deposition being taken with the same force and effect as though all requirements of the rules and statutes had been complied with.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that any and all objections to any question or answer herein may be made upon the offering of this deposition in evidence upon the trial of this cause with the same force and effect as though the witness were present in person and testifying from the witness stand.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking this deposition may return and file the same without the signature of the witness thereto, said signature of the witness being waived by all parties, and said deposition to be used on the trial of this cause with the same force and effect as though the same had been read and signed by the said witness.

[fol. 140] ELMO IRBY, the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

Direct examination.

By Mr. Aultman:

Q. State your name, please, sir?
A. I'm Elmo Irby.

Q. Where do you reside, Mr. Irby?

A. In Fort Worth, Tarrant County, Texas.

Q. What is your professional occupation?

A. I am an attorney at law.

Q. Are you a licensed and practicing attorney in Fort Worth and of the Tarrant County and State Bar Associations?

A. Yes, I am.

Q. How long have you been a licensed and practicing attorney?

A. Since 1942. I have actually practiced since leaving military service in the beginning of 1947.

Q. Where do you maintain your office?

A. In the Fort Worth National Bank Building, Fort Worth, Texas.

Q. How long have you had your offices there?

A. Since February of 1960.

Q. Are you acquainted with Wright Armstrong, Jr.?

[fol. 141] A. Yes, I am.

Q. How long have you known him?

A. For about 12 years.

Q. Is your acquaintance such that you have associated with him fairly regularly?

A. Yes, I have.

Q. During your practice, Mr. Irby, have you had occasion to be associated in any capacity with Wright Armstrong, Jr.?

A. Yes, I have.

Q. On what dates did that occur?

A. Well, actually we were associated together in about 1953 or '4 and 1955, during the illness of Mark McGee with whom he was, Armstrong was, a partner, and when McGee was ill I came in and assisted in handling various legal matters, and then at a later period he officed in my office beginning about July 15, 1960, up until fairly recently, actually when he took this position as judge of the Corporation Court.

Q. What arrangements did you and Mr. Armstrong make with reference to your office arrangements and the financial affairs relative to such?

A. I allowed him to use the facilities of the office, to the library and the secretary, with an understanding that it would be to a reasonable extent, and to practice law there, any kind except criminal law, and he paid me no overhead or made no payments to me, and that he would run some [fol. 142] errands and do some small things for me, but that if he did anything particularly large that I would pay him out of the fees received, which in my judgment it ought to be paid, and I paid him no salary and filed no withholding statements or anything.

Q. Did anyone pay him a salary while he was there?

A. No.

Q. Do you have any records of any amounts of money that you paid him during his stay there at your office?

A. Well, the amounts of money which I paid him, which are shown by my records, are as follows: On December 31, 1960, I paid him $75 for work done on the brief on the appeal in Mrs. C. E. Cannon versus Nick Kemp.

On December 12, 1960, I paid him $37.50 out of a fee received from Gaylan, G-a-y-l-a-n, W. Wilson, and on—

Mr. Hooper: How much was that, now?

The Witness: Thirty-seven dollars and a half, and on June 27, 1961, in the same Gaylan W. Wilson, I paid him a hundred forty-two dollars ten cents.

On December 28, 1960, out of collections from some accounts of the bankrupt Jack Caudle Company, I paid him $47.42, and then in July of 1961 $75 from Byron Darling, D-a-r-l-i-n-g, adoption, and that's all the money that I paid to him.

By Mr. Aultman:

Q. During the time that he was there from the date you [fol. 143] referred to as July of 1960 until recently, during that time, sir, did you have occasion to become acquainted with his law practice and his income from his practice?

A. Yes, I did.

Q. Do you know what his income was from his practice?

A. Well, it was practically nothing. He had a few appointments as attorney ad litem, but his condition was such and state of mind that he had practically no lucrative law practice, and, now, to the best of my knowledge, his total income, except for what I paid him during that time, must not have exceeded about $200 from the practice of law.

Q. Now, do you know where he was employed from the date of his divorce until he came to your office in July of 1960?

A. Yes, I do. At the time of his divorce, which was, I believe, in December 1959, or about that time, he was employed by the General Cement Company, Trinity Portland Division, and he, I think technically, resigned. He lost his job actually because of his physical and mental condition in about March, I think, or the end of February of 1960.

Q. Did he have any other employment from that date until he came to your office?

A. Yes, he went to work during March some time for the City of Fort Worth in the City Attorney's office, and he lost that employment in May.

Q. Do you know whether he had any employment from [fol. 144] May until he came to your office in July, I believe you said, of 1960?

A. Well, I'm sure that he had no regular employment, because I saw him from time to time. His family requested me to do what I could do to help his mental condition and physical condition and I saw him fairly regularly, and I am sure that he had no regular employment and he was incapable of holding any during that period.

Q. Now, you stated previously that you had been well acquainted with him for several years. I'll ask you, Mr. Irby, whether you noticed any change in his condition and his conduct after his divorce and until now; was it different than it was previously when you have known him?

A. You mean before the divorce?

Q. Yes, sir.

A. Well, at about the time the divorce was granted and subsequent to that time he began drinking very heavily and paying no attention to his business and employment, and it seemed to me that his mental state was certainly very affected, because he reached the point during this period when he could hardly carry on a connected conversation.

Now, this was not continuous, but it was intermittent and that was the reason that he could not hold his employment with the cement company and he couldn't hold his employment with the City of Fort Worth, and at the time he was [fol. 145] fired by the City of Fort Worth he was in a deplorable mental and physical condition, but he came to me and told me that he had decided that he would cease drinking and try to regain his position and I told him that he could come and use my office at that time, I was going on my vacation in July of 1960, in fact I left July 17, and that's the approximate date he began coming up there.

Now, I don't know of my own knowledge what happened while I was gone, which was about a month, but when I returned he still was not able to carry on regular office hours and he couldn't be relied on to attend to things, and his mental state I would describe as fuzzy but he became very interested in this Cannon appeal, which we had a very good case for appeal and a directed verdict had been directed when there was plenty of evidence to go to the jury, so he just pulled himself up by taking an interest in the legal problems that were involved and in briefing, and he began to improve until at the present time I think he's restored to his previous mental condition pretty well and his physical condition, I suppose, is good. I mean it appears to be, and I know from my own knowledge that he stopped completely drinking from that time, so that he has been sober since then.

Q. State whether or not in your opinion his condition consisted of any emotional breakdown rather than just drinking.

A. Well, it seemed to me from my own observation and [fol. 146] conversations with him that he suffered an emotional or mental breakdown during that period. Now, of course, the drinking was pretty heavy, but I don't think that that was the whole thing. I think he suffered—he just suffered a complete breakdown during that period.

Q. Mr. Irby, have ~~you~~ during your lifetime and particularly during your law practice had opportunities to observe people who were suffering from emotional strain?

A. Yes, I have.

Q. And have you had opportunities to observe people who were subject to alcoholism?

A. Yes, I have. In fact, that's what caused me to completely eliminate from my practice the handling of divorces.

Q. Do you believe that based on such experience and observations that you can tell when a person, whom you have known for a long time, has become subject to such emotional strain, breakdown and alcoholism?

A. Yes, I can when it's severe, has a severe effect.

Q. During the times that you have observed Mr. Armstrong, that is, between the date of his divorce and the date that he left your office from the last date that you have described, did you have opportunities to observe his conduct?

A. Yes, I did numerous times.

Q. And would you describe that conduct, please, sir; will you describe again the conduct upon which you base [fol. 147] your opinion.

A. Well, at about the time the divorce was granted and subsequent to that time he began drinking very heavily and paying no attention to his business and employment, and it seemed to me that his mental state was certainly very affected, because he reached the point during this period when he could hardly carry on a connected conversation.

Now, this was not continuous, but it was intermittent and that was the reason that he could not hold his employment with the cement company and he couldn't hold his employment with the City of Fort Worth, and at the time he was fired by the City of Fort Worth he was in a deplorable mental and physical condition, but he came to me and told me that he had decided that he would cease drinking and try to regain his position and I told him that he could come and use my office at that time. I was going on my vacation in July of 1960, in fact I left July 17, and that's the approximate date he began coming up there.

Now, I don't know of my own knowledge what happened while I was gone, which was about a month, but when I returned he still was not able to carry on regular office hours and he couldn't be relied on to attend to things, and his mental state I would describe as fuzzy but he became very interested in the Cannon appeal, which we had a very good case for appeal and a directed verdict had been directed when there was plenty of evidence to go to the jury, [fol. 148] so he just pulled himself up by taking an interest in the legal problems that were involved and in briefing, and he began to improve until at the present time I think he's restored to his previous mental condition pretty well and his physical condition, I suppose, is good. I mean it appears to be, and I know from my own knowledge that he stopped completely drinking from that time, so that he has been sober since then.

Q. Did you represent Mr. Armstrong at the time of his divorce?

A. No, I did not.

Q. Were you present when the parties reached an agreement for the division of their property?

A. I was present in the house when he and his divorced wife, Flournoy, were dividing personal property and possessions.

Q. Do you know anything about the arrangement concerning their home located at 6853 Middle Road?

A. 6853 Middle Road?

Q. Yes, sir. Do you know anything about the division?

A. Well, I know only what reference was made by them to the agreement that he had made concerning the home at that time. Now, I had read a copy of a settlement agreement but I don't have a copy of it and I don't remember offhand the terms of the settlement agreement. Now, what they said I remember better than anything else.

[fol. 149] Q. When you say "they said," are you talking about both parties?

A. Yes, the divorced husband and wife.

Q. Mr. Armstrong and his former wife?

A. Yes, Flournoy.

Q. All right, sir.

A. And they were to sell the house and to divide the proceeds among—between themselves.

Q. Do you know if that house has been sold?

A. Yes, I know that it has been sold, because I was consulted in connection with the sale.

Q. Do you know how the proceeds were divided?

A. Well, of course, the major part of it, as I recall, took to pay off the balance due on the note, and then of the balance Armstrong signed over the major portion of it to his former wife, Flournoy.

Now, I do not have the amounts and do not know what they are, but I saw the checks and closing statement of the bank.

Q. To refresh your memory, do you know whether or not she received $900 and he received $100?

A. That is my recollection, that what he got out of it was $100, and then she got, I thought, approximately a thousand dollars, but that's been some time and I don't have any records.

Q. But you were present and did see the checks, is that correct?

[fol. 150] A. Yes, I saw the closing statement and checks.

Q. Do you recall whether or not Mr. Armstrong was in the hospital at any time near the divorce date?

A. Yes, he was in St. Joseph's Hospital following the divorce, and following, within a day or two following the meeting we had out at their former residence between he and his former wife, Flournoy, and Mr. Winfred Hooper, and he was in the hospital about two weeks at that time because I visited him in the hospital.

Q. During that time did you have occasion to go to the house where they had lived?

A. Yes, I did.

Q. I ask you whether or not you noticed any property having been taken from the house during the time he was in the hospital.

A. Well, when I went back out there I went because I was concerned with the fact that there was at least one gun in the house and some valuable silver, and the house was locked up, and so we went. I went into the house with the company of his father and we took out the gun and took the silver that was remaining in the house and put it in a place of safety, and at that time a substantial portion of the property which had been agreed between—in Mr. Hooper and my presence would remain in the house as Mr. Armstrong's property had been removed.

Q. For the purpose of clarification, I'll ask you, did you [fol. 151] say that some of the property which they had agreed would remain in the house had been removed?

A. Yes.

Q. And Mr. Armstrong was in the hospital during this time?

A. He was in the hospital that day, yes, and the day previous to that.

Q. Do you know whether or not Mr. Armstrong removed it?

A. No, I don't know. I just—all I know is what he told me about the cause of his immediate illness and I just know that some of the things, valuable items were missing when I went back out.

Q. Since the divorce, Mr. Irby, have you had occasion to see the minor child of Mr. & Mrs. Armstrong?

A. Yes, I have. You are referring to Molly Page Armstrong?

Q. Yes.

A. Yes, I have.

Q. Where have you seen her?

A. Out at the residence of Mr. & Mrs. Armstrong, Sr., where he resided, and then he's had her down at our office on different visits she's made to Fort Worth.

Q. Can you recall the latest time that she came to your office in the presence of her father, Mr. Armstrong?

A. Well, he brought her up there during the last Christmas-time when she was visiting here in Fort Worth.

[fol. 152] Q. Are you talking about the Christmas of 1961?

A. Yes, I am.

Q. Do you recall when before that he brought her to your office?

A. I am not sure. I think when she was here during the summer, now, it's hard for me to separate these times when I saw her out at the house here in Fort Worth and the times that she was at the office. She was at our office at least twice during the entire period, I am sure.

Q. Can you tell the court approximately how many visits of any duration she has made to her father here in Fort Worth and stayed with him?

A. Well, she's visited during this past Christmas, 1961, and she visited in the summer that I know before that.

Q. Do you know how long those visits were?

A. No, I don't actually know. They must have been at least a week or ten days, but I have no knowledge of exactly how many days they were.

Q. Do you know whether or not she visited in his home for at least a month during each summer?

A. I don't know of my own knowledge. I do know that she had an extended visit but the exact times I don't know.

Q. Do you know whether or not during those times that she ate and slept in the home of her father?

A. Yes, and his father, her grandfather's home with him.

[fol. 153] Q. Did they feed and clothe her?

A. Yes, I—yes.

Mr. Aultman: I believe that's all.

Cross examination.

By Mr. Hooper:

Q. Mr. Irby, you have testified that during the winter of 1960 and the spring of 1961 you paid about $400 to Mr. Armstrong for assisting you in cases that you were the attorney on that were in your office while he had an arrangement with you where he could use your office facilities free of charge.

A. That's correct.

Q. You also testified that to your knowledge Mr. Armstrong received practically nothing from the practice of law and that you would be surprised if he earned over, I believe the figure was, about $200—

A. That's right.

Q. —during the period that he had this arrangement with you?

A. That's correct.

Q. Are you in your office constantly, Mr. Irby, or, like other attorneys, do you move in and out of your office?

A. Well, I am in my office most of the time during office hours. Most of my practice is office practice.

Q. Now, did you see every client that Mr. Armstrong had any dealings with?

[fol. 154] A. No.

Q. Did you know what type of legal work he did for all of them who came in to see him while he was there?

A. No, probably not all. I think probably practically all I did.

Q. Well, did you know what kind of a fee arrangement he had with these people?

A. Generally speaking, because he come in and asked me what to charge them or what he should.

Q. On some occasions he would consult you as to what fee should be charged on a particular matter?

A. That's right.

Q. But I assume he did not do that on every case he handled?

A. I don't know whether it was on every case or not, but it would have been practically on all of them.

Q. All right. Did you know of every fee that was paid to him?

A. No, I'm sure I didn't know of every fee.

Q. Do you know if Mr. Armstrong had any other employment than the practice of law during this period of time?

A. Well, now, during the period when he was in my office, I am sure that he did not have any other regular employment.

Q. Well, do you know if he had any other employment, regular or not?

[fol. 155] A. I think that possibly on one or two occasions he filled in as a substitute in the Corporation Court bench after he began.

Q. Do you know what he was paid for that?

A. No, I do not.

Q. Do you know how long a period of time he served as a judge on the Corporation Court during this period of time?

A. No; it would have been usually one day.

Q. All right.

A. Nothing more for a week or two, and perhaps another day.

Q. Then it was more or less sporadic during the entire period of time that he had this arrangement with you?

A. No, no, only at the very last.

Q. I see.

A. He was not in any condition to have sat on any kind of bench when he came up there first.

Q. Now, was this deterioration in his condition, which you have mentioned, in your opinion brought on primarily by his excessive drinking?

A. Well, in my opinion the excessive drinking may have been brought on by the emotional trouble.

Q. I understand that, but that is not the question, Mr. Irby.

I asked you if you are of the opinion that his deterioration and physical and mental condition was primarily as a [fol. 156] result of his excessive drinking.

A. No, I think the deterioration, the shock came first and that the excessive drinking came probably as a result of that.

Q. Then, in your opinion, Mr. Armstrong suffered no ill effects from excessive alcoholism, is that correct?

A. No, I think he did suffer a very great ill effect.

Q. Do you know what he earned by working for Portland Cement?

A. No, I do not.

Q. Did Mr. Armstrong borrow any money from you?

A. No, he did not.

Q. The description you have given of his earnings would indicate that Mr. Armstrong did not earn enough to sustain himself.

A. That's true.

Q. Do you know where he received the additional subsistence necessary to keep body and soul together?

A. Yes, I do know.

Q. Where?

A. He lived in his parents' home where he had no expenses, and ate.

Q. All right, and did he receive money from his father?

A. I know of none.

Q. All right. Is his father employed?

[fol. 157] A. Oh, yes, he is.

Q. In what capacity?

A. He's the executive vice-president of the Forth Worth & Denver Railroad.

Q. Has he held that position for a lengthy period of time?

A. I think about 10 years.

Q. All right. Will you describe Mr. Armstrong's father as a person of modest or moderate or more than average means?

A. I have no knowledge of what his financial condition is except just impressions that I have derived.

Q. What impressions have you derived?

A. Well, my impression has been that Mr. Armstrong has no very substantial personal fortune in that his position on the railroad actually as the man in charge of the Fort Worth & Denver has probably brought him a very considerable salary and other perquisites of expenses, but he is actually in his own right modest, relatively modest means for a man in his position.

Q. Where is his home?

A. On El Campo Terrace or Drive, I believe they call it now.

Q. Is that in Arlington Heights or Westover Hills addition?

A. It's in Arlington Heights. The name of the addition —and the reason I know this is that I had to straighten out the taxes. His house rests on a place in part of Chamberlain-Arlington Heights addition which was replatted and [fol. 158] it's on four lots which are cut in in odd shapes about 25 feet wide each and he had paid taxes on two of the lots and not on the other two, and not knowing about this odd division, and the City threatened to foreclose on the taxes and I had to go up and get it straightened out.

Q. Having dealt, then, with the tax problem on that property, I am sure you would be able to give us a pretty close approximation of the value of the improvements on that property, would you not?

A. Well, of course, I am not a real estate appraiser.

Q. I understand that.

A. But the house they have there is an old house that's probably 40 years old. It's been redone and it has a low side yard, which was formerly the street, which I also found out in the course of my investigation on this, and my actual —from handling sales of somewhat similar property I should judge that the house might sell for as much as $25,000 at present, at the present market. It's not air conditioned, not centrally heated, has floor furnaces, and parts of it could stand a little bit of repair and rebuilding.

Q. As a matter of fact, that is a fine old home in one of the most exclusive residential areas in the City of Fort Worth, is it not?

A. Well, it is adjacent to one of the exclusive residential areas, but its value is injured by the small houses which [fol. 159] are in its immediate neighborhood to the west, and if you will go down El Campo Drive and also to the south from it, in other words, it's on a fringe.

Q. You mean where David Belew, and people like that with Cantey, Hanger, Johnson, Scarborough & Gooch, lives—

A. I don't know where David lives.

Q. He lives on El Campo right down the street from Mr. Armstrong.

A. If you will drive in the neighborhood you will find over there south and west of it are small houses. If you will go north a couple of blocks, I don't know what street crosses into Westover Hills, there are some very fine houses, but even some of those in Westover Hills, which you would reach first going directly through the block, are small houses. The fine houses are over several blocks north of there, but it is a nice and beautiful house and they have made it very pretty.

Q. Do you happen to represent Mr. Armstrong, Sr., as an attorney?

A. No, I do not.

Q. You did represent him in tax matters at one time?

A. Yes, he asked me to do it and I did it as a personal favor without any fee.

Q. Now, as a matter of fact, when the divorce was granted between the younger Mr. Armstrong and his wife, Flournoy, in which I represented Mrs. Armstrong, he did not have [fol. 160] an attorney of record in that case, isn't that correct?

A. Well, I didn't know that. I thought Tom Law was his attorney. I didn't know that.

Q. Well, you actually advised Mr. Armstrong and attempted to help him in that divorce as much as you could, did you not?

A. Well, frankly, I tried to stay completely out of it as far as I could.

Q. Yes.

A. And the only part I took in it was that which you were present and I took that under very strong protest at his very urgent personal request.

Q. How long prior to the time that you and I and the Armstrongs met out at the house to divide this personal property that day to your observation, knowing Mr. Armstrong well, had he been drinking heavily?

A. Well, as far as my knowledge goes, he had begun drinking heavily, possibly very heavily, a month or so before that. Now, of course, I have been out at their residence a number of times, and when I was there everybody was drinking, and I take a drink myself occasionally but I am not a very heavy drinker, and I didn't attempt to keep up with the drinking that was going on there before.

I hesitate to express an opinion as to whether people drinking in their own houses are drinking very heavily or not, because I think that it depends on the person entirely [fol. 161] as to whether it's heavy drinking or not. For what for me would be pretty heavy might not be so heavy for someone else.

Q. Did you not understand that one of the reasons for that divorce was Mr. Armstrong's drinking?

A. I don't know what the reasons were. I don't recall that I have seen the petition and I didn't hear the evidence.

Q. Do you know if Mr. Armstrong ever contributed anything at all to the support of his daughter?

A. You mean of my own personal knowledge other than statements from him?

Q. Yes.

A. Other than buying her clothes and having her here when she was here, I have no personal knowledge.

Q. Did you see him buy clothes for her?

A. She showed me very proudly a little dress that they said they had bought. Now, that's the little girl.

Q. They said they had bought?

A. She said that her daddy had gotten her.

Q. I see. Aside from this dress, do you know of any other contribution he has made to the child in a monetary way?

A. I don't know.

Q. Buying her food or clothing or shelter?

A. She was here staying with he and his family.

Q. Yes, I understand that; you described this for us.

Now, if I understand your testimony correctly, you testi-[fol. 162] fied that to your knowledge Mr. Armstrong has been sober and apparently has quit drinking since this Cannon appeal, since he started to work on it?

A. No, since July 1960, since he came to my office, or some time perhaps shortly before that; he quit drinking about that time.

Q. Let's back up just a minute. It would seem to me that there is some conflict in your testimony in that you testified that Mr. Armstrong was undependable, that he could not handle matter correctly when he was in your office, that he was drinking and that one of the problems—

A. No, I did not say that.

Q. —reasons that he was not handling work properly was because of the fact that he was drinking.

A. No, I did not say that.

Q. All right.

A. No, I said that when he came to my office his mental condition was fuzzy and he wasn't capable of handling matters but he had quit drinking and I made very sure of that, because in our office we have a rule that nobody takes a drink and if they do they just don't come back to the office, and because of the type of clients we have and our own feeling, and I wouldn't have let him stay in the office if he had been drinking.

Q. In the office?

A. I wouldn't have let him stay there.

[fol. 163] Q. Do you know whether he drank at home?

A. No, but I made—went out with him and he didn't drink anything and I am sure I would be able to tell it if he had continued drinking.

Q. You and Mr. Armstrong are close personal friends, are you not?

A. That's right.

Q. Which would explain the fact that you went out with him on occasions and that you visited frequently, apparently, in his parents' home, is that correct?

A. That's correct.

Q. Are you also close personal friends with the older Mr. Armstrong and his wife?

A. Yes, I am.

Q. On how many occasions have you visited their home when the little girl, Molly Page, was there?

A. Well, of course, I can't say exactly, but at least probably six or eight times.

Q. All right. Now, do you have any reason to think that visitation with Molly Page was restricted or limited in any way by the former Mrs. Armstrong with the child visiting with her father?

A. Do you mean of my own personal knowledge?

Q. Yes, sir.

A. No, only what I have been told and that's not to me [fol. 164] directly.

Q. To your knowledge there has been extended periods of visitation during which the little girl was here, Christmas and in the summer, is that correct?

A. That's true, yes.

Q. Is she in school at the present time, or do you know?

A. I don't know.

Q. All right. About how is her age?

A. Well, she's about, I believe, four years old. I am not very good on these children's ages and birthdays. I think she must be somewhere about that, or five.

Q. Are the older Armstrongs, the grandparents, very fond of this little girl?

A. Yes, I think that they are.

Q. That has been your observation in being around them with her?

A. Yes.

Q. Do you know if they have ever made any contribution to the support or maintenance of the child?

A. Well, other than the time she was in their house, I don't know whether they have or not.

Q. Of course, they would be expected to feed and clothe the child while she was visiting with them, but—

A. Other than that, I don't have any knowledge.

Q. You are not, of course, a medical doctor or a psy- [fol. 165] chiatrist, are you, Mr. Irby?

A. No, I am not.

Q. And have had no training in either of those fields?

A. No.

Q. So that the opinions that you have expressed concerning Mr. Armstrong and his condition have been those of a layman and a friend?

A. That's right.

Q. All right. Your explanation of the disparity in the distribution of the equity in the home of Mr. Armstrong and his wife was based upon your rough recollection from having seen the settlement agreement between the parties or discussing it with Mr. Armstrong or something at the time, is that correct?

A. Yes, and I saw the checks.

Q. All right. Do you happen to know why that difference existed?

A. Well, I understood that at least part of it because some separate property of Mrs. Armstrong's had gone into the purchase of the house. Now, I have no actual knowledge of that except that I think that he told me that some had gone in, she had contributed more than he had at the inception.

Q. And to your mind does that at least in part explain the difference in the amounts of money received by Mr. Armstrong and by Mrs. Armstrong at that time?

A. Well, I suppose it does in part. I think he simply [fol. 166] consented that she have the major part of it. They were to divide in some way the money received.

Q. What makes you think that?

A. Well, because, as I remember their conversation between he and she out at the house that time, there wasn't supposed to be any such a disparity in money received out of the house.

Q. What was that conversation?

A. Between Armstrong and his former wife, Flournoy.

Q. Yes. What was it?

A. It was a verbal conversation there in the living room of the house.

Q. What was it; who said what?

A. I don't remember the exact words; it's been several years.

Q. Do you happen to know whether Mr. Armstrong himself requested visitation with Molly Page and went out and picked her up and took her back to her mother and made the arrangements for visitation with the child?

A. I have no personal knowledge of those circumstances.

Q. Do you have any second-hand knowledge?

A. Yes.

Q. What is it?

A. What he has told me and what Mr. and Mrs. Armstrong, Sr., told me.

Q. What is that?

[fol. 167] A. That he had written, his father had written and I believe that there had been some telephone calls concerning the visitation, and then the former wife, Flournoy, I think, as I understood it in the first instance, specified that Mrs. Armstrong had to come and get the girl.

Q. Do you know why?

A. And Mrs. Armstrong went out on the train and got her.

Q. Do you know why that was?

A. No, I don't.

Q. Did the little girl stay with Mr. and Mrs. Armstrong, Sr., her grandparents, on each occasion when she visited here in Fort Worth?

A. Well, she stayed in the house. They were all present, so I am not sure just who technically she would be staying with.

Q. It was in their home?

A. Yes, in their home where her father lived.

Mr. Hooper: I believe that's all.

Redirect examination.

By Mr. Aultman:

Q. One other question. There has been some confusion about your testimony as to his mental condition during the time he was in your office. Would you explain that again, that is, after he started working with you in July of 1960.

A. Well, when he first came up there I'd just describe his condition as fuzzy. You could never tell when he was [fol. 168] going to come in or when he was going to leave and he didn't seem to very easily grasp what was going on about things.

I know that on several occasions I sent him up to the courthouse to do things about default judgment and check up things and he would come out having forgotten about it, but his condition began to improve and his mental processes began to improve and he became more interested in the practice of law as the months went on.

Q. State whether or not the condition that you described was a result of his drinking at that time.

A. No, I am sure that he was not drinking at that time, I think I could have told it if he was drinking.

Q. I believe you said, in answer to one of Mr. Hooper's questions, that in reference to his hospitalization right after or his being hospitalized right after the divorce, did you state that you thought the drinking was the result of the emotional upset or that the emotional upset was the result of the drinking; which did you say?

A. Well, I thought that the heavy drinking, the heavy part of the drinking was a result of being emotionally upset.

Q. Do you know what he was upset about?

A. Well, it was, of course, his personal problems were very pressing.

Q. What personal problems?

A. His wife and the question of divorce.

[fol. 169] Mr. Aultman: That's all.

Recross examination.

By Mr. Hooper:

Q. Are you married, Mr. Irby?

A. No, I am not.

Q. Have you ever been married?

A. No.

Q. Has Mr. Armstrong remarried?

A. No.

Q. Do you know if he is dating anyone now?

A. No, I don't know. On occasions I have out with him, we have gone together and actually recently haven't been any dates unless we visited in the home where people already were.

Q. Then of your own knowledge, either personal knowledge or from what Mr. Armstrong has told you, he has not dated since the divorce, is that correct?

A. Oh, I am sure that he has had some dates, but not regularly. You asked me whether he was now or not.

Q. Yes.

A. And I don't actually know.

Mr. Hooper: I see. I believe that's all.

Mr. Aultman: That's all. Thank you, sir.

(Signature waived.)

[fol. 170]

State of Texas)
County of Tarrant)

I, Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing answers in response to the interrogatories as indicated were made before me by Elmo Irby, the witness hereinbefore named, after said witness had been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and were thereafter reduced to typewriting by me and under my supervision; and the above and foregoing deposition as set forth in typewriting is a full, true, correct and complete transcript of the proceedings had at the time of taking said deposition.

I further certify the signature of the witness to his deposition was waived by all parties present at the taking of said deposition.

Given under my hand and seal of office on this the 18th day of June, A.D., 1962.

Wayne E. Silverman, Notary Public in and for Tarrant County, Texas. My Commission expires June 1, 1963. Fees $33/00 Due from Respondent.

(Seal)

[fol. 171] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102485

In the Matter of the Adoption of MOLLY PAGE ARMSTRONG, a Minor

ANSWERS AND DEPOSITION OF DR. GORDON B. KELLY— Filed June 22, 1962

Answers and Deposition of Dr. Gordon B. Kelly, a witness produced on behalf of the Respondent, taken in the above styled and numbered cause on the 14th day of June, A.D. 1962, commencing at 10:30 A.M., before Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, at the offices of McGown, Godfrey, Logan & Decker, located on the Fifth Floor of the Trans-American Building, in the City of Fort Worth, County of Tarrant, State of Texas, in accordance with the agreement hereinafter set forth.

APPEARANCES:

For the Petitioners, Mr. and Mrs. Salvatore Manzo: McGown, Godfrey, Logan & Decker, By: Winfred Hooper, Jr., Esq., Trans-American Building.

For the Respondent: Ronald Aultman, Esq., 412 Sinclair Building, Fort Worth, Texas, and Wallace Barton Boling, Esq., Sinclair Building, Fort Worth, Texas.

[fol. 172] AGREEMENT

It is hereby agreed by and between the parties hereto, through their attorneys appearing herein, that the Respondent may take the deposition of Dr. Gordon B. Kelly at this time without the service of notice of time of taking said deposition and without the issuance of a commission thereon, said deposition being taken with the same force and effect as though all requirements of the rules and statutes had been complied with.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that any and all objections to any question or answer herein may be made upon the offering of this deposition in evidence upon the trial of this cause with the same force and effect as though the witness were present in person and testifying from the witness stand.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking this deposition may return and file the same without the signature of the witness thereto, said signature of the witness being waived by all parties, and said deposition to be used on the trial of this cause with the same force and effect as though the same had been read and signed by the said witness.

[fol. 173] DR. GORDON B. KELLY, the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

Direct examination.

By Mr. Boling:

Q. Would you state your full name, please.
A. Gordon B. Kelly.

Q. Where do you reside?
A. Fort Worth, Texas.
Q. What's that address?
A. 1317 Thomas Place.
Q. What do you do?
A. I am a physician and do internal medicine.
Q. I see. That's a medical doctor?
A. Yes.
Q. Doctor, how long have you been in the practice?
A. Ten years.
Q. Ten years, and you have an office here in Fort Worth?
A. Yes.
Q. Where is your office?
A. 1001 Pennsylvania Avenue.
Q. 1001 Pennsylvania Avenue?
A. Uh-huh.
Q. Where did you to medical school?
[fol. 174] A. Tulane University, Louisiana.
Q. Tulane; what degrees do you hold?
A. Md.

Mr. Boling: Hoop, I don't know if you will stipulate to his qualifications as an expert medical doctor.

Mr. Hooper: I will certainly so stipulate.

Mr. Boling: All right, fine, we'll dispense with some of this, then.

By Mr. Boling:

Q. Doctor, do you know Mr. Wright Armstrong, Jr.?
A. Yes.
Q. How long have you been acquainted with him?
A. About three or four years, four or five.
Q. Is that socially or professionally?
A. Both.
Q. Both. Has he ever been under your care professionally?
A. Yes.
Q. When was that?
A. Initially in 1959.
Q. Initially in 1959. Do you recall some closer date in '59?

A. Well, the first time I saw him was in February of '59.

Q. February of '59, and what was the occasion for that?

A. He had an upset stomach.

Q. When was the next occasion that you saw him?

[fol. 175] A. In January of 1960, January 1st.

Q. January 1st, 1960, and what was the occasion for that visit?

A. He had had a convulsive episode and was taken to the emergency room at St. Joseph's Hospital and I was called to see him there.

Q. You were called to care for him?

A. Yes.

Q. And did you then become his physician treating that disorder?

A. Yes.

Q. How long was he in the hospital, do you recall?

A. I can probably find out here. Now, wait, that January 1st, I thought that was the date that he was admitted. Perhaps that was the date that he was discharged. That's the only date that's on this slip, so—

Q. It was around the first of the year there when he was admitted?

A. Yes, sir. He was in the hospital, as I recall, probably two or three weeks.

Q. Two or three weeks.

A. But that's—I don't remember it all and I do not have those dates.

Q. Now, you have indicated that he was admitted for what purpose?

[fol. 176] A. Because he had had a convulsion.

Q. Convulsion. Did you ever determine in your opinion as to what was causing that condition?

A. We did numerous tests on him. He was also seen by Dr. Rehfeldt, who is a neurosurgeon.

Q. Why was a neurosurgeon brought in?

A. Because the convulsion is due to an abnormal discharge of impulses from the brain initiating this thing, and obviously the brain was involved, and that was the reason. Some of the tests that we did suggested an organic basis before this seizure. On the other hand, because of the history an emotional basis was also very possible.

We did a spinal tap, in which the pressure was slightly increased, the spinal fluid protein was a little bit increased, and Dr. Rehfeldt did a pneumoencephalogram which suggested organic disease. These films were sent up to the Mayo Clinic and reviewed by the people up there, and, now, I personally did not talk to the people at the Mayo Clinic. However it's my understanding that they called Dr. Moretōn, a radiologist here in Fort Worth who had also seen the films, and they, too, felt that this possibly was due to organic brain disease.

Q. I see.

A. Now, this was not definite at all.

Q. I see.

A. As I say, it could—all of these symptoms could have [fol. 177] been on an emotional basis.

Subsequent to his discharge from the hospital we had some further tests done by Dr. Wickersham, and these, too, suggested more of an emotional basis for the seizure, and so on, than organic brain disease, and subsequent to that time he was treated by Dr. Holmgren, a psychiatrist.

Q. From your observations and your knowledge of the situation in the various tests that were run, Doctor, did you arrive at an opinion as to what was causing the convulsions?

A. At that time I was concerned that it was organic, but we could not definitely say this. As events have subsequently evolved, it was not an organic brain disease.

Q. What was it, Doctor?

A. An emotional disturbance.

Q. An emotional disturbance.

Did you know whether or not this emotional disturbance, what reaction did that have on Mr. Armstrong, do you know?

A. Emotional disturbances can certainly be as incapacitating as organic diseases. Of course, they can go to the point where a person is completely unable to function, and to a certain extent I am sure that that did—that was the case here.

Q. In your opinion, he was incapable of—

A. He was not making a satisfactory adjustment, that's right, he was unable to carry on in his normal fashion.

Q. For instance, say, gainful employment?

[fol. 178] A. At that time, that is correct.

Q. And for what period of time, in your opinion, did that continue?

A. Subsequent to his discharge from the hospital he, as I say, went back to Dr. Holmgren and I do not treat emotional disturbances so actually I did not follow him any more. I cannot say for how long he did continue under Dr. Holmgren's care.

Just on an average I would say that—well, it actually—it's very difficult to say. You can't apply averages to individuals, but it would not have surprised me had it been a year before things got better. On the other hand, it could have been three or four months, but I just—since I was not directly involved subsequently I can't say how long it was.

Q. Well, from what you knew of the case and from your observations of him, what would be your opinion as to how long, say, following his discharge from the hospital that he would have been so involved that he would be unable to hold down gainful employment?

A. Well, I don't recall hearing anything specific.

Q. Well, let me put it this way, Doctor.

In your opinion, would it have been difficult to say for, say, within six months after he was discharged from the hospital, in your opinion, of holding down gainful employment because of his condition?

A. That would be a reasonable and conservative estimate.

[fol. 179] Q. Now, Doctor, I understand there was some evidence that Mr. Armstrong had been drinking.

A. Yes.

Q. Did you consider that facet of his problem?

A. Yes, I believe drinking or alcoholism is a symbol of emotional disturbances.

Q. In other words, as I understand it, then, correct me if I am wrong, it is your opinion that his drinking was occasioned by his emotional disturbance?

A. That's right.

Q. And not vice versa?

A. That's right.

Q. Doctor, you indicated that it would be a conservative estimate in your opinion from what you knew of the situation that for a six-month period following his release from the hospital that he probably would be unable to hold down gainful employment.

A. Yes.

Q. In your opinion, is it also likely that for even a period following that he would still be perhaps hazy and still not too well adjusted and still very difficult?

A. It would be an extremely difficult transitional period.

Q. I see. Even following, say, this six-month period?

A. Yes.

Q. Perhaps on up to a year, as you indicated?

[fol. 180] A. Yes.

Mr. Boling: That's all we have.

Cross examination.

By Mr. Hooper:

Q. Doctor, where is your office, on Pennsylvania Avenue?

A. Pennsylvania, yes, sir.

Q. Are you associated with any other doctors?

A. Not directly. I share office space with another doctor. We have individual practices.

Q. What building are you in?

A. It's called the Physicians Building.

Q. How long have you been practicing medicine?

A. Well, I graduated from medical school in 1951. I took a year of internship and two years of residency, so I have been practicing medicine, I guess, seven years or so, something like that.

Q. All right. Being an internal medicine man, do you have occasion to see many patients suffering from the effects of execessive drinking or alcoholism?

A. Yes, I do.

Q. In your opinion, was this convulsive episode that you have described for us which was the reason for Mr. Armstrong's, your patient, admittance to St. Joseph's in part or all a matter of delirium tremens?

A. At that time I did not think so. I still don't think it [fol. 181] was delirium tremens.

Now, I assume the seizure probably was because of the withdrawal from alcohol. However, it was not delirium tremens. All he had was just a seizure or fit, not the full picture of the DT's.

Q. Then he was having withdrawal symptoms rather than DT's, which, as I understand it, are—

A. They are also withdrawal symptoms.

Q. Oh, are they?

A. Yes.

Q. I see.

A. When a person has been drinking heavily for a prolonged period of time the brain is suppressed because alcohol is a depressant. The brain gets used to that suppression. Then when the cause of the suppression is withdrawn the brain is over stimulated and causes many different changes, convulsions being one of them, only one.

Now, I just have to assume that his convulsion was on that basis because we found no other cause for it, but it was certainly, and a typical, manifestation. At that time we considered it, of course, but we really did not think that that was it.

Q. Without organic damage to the tissue of the brain or a disease or disorder of the brain, and without some traumatic experience of the patient which damages the brain [fol. 182] and also ruling out DT's, will a patient normally have a convulsive seizure or type as a result of emotional strain or stress only?

A. It is possible.

Q. It is not probable, though, is it, Doctor? It's very rare that anyone would have such a seizure?

A. It would be one of the much less common causes of convulsion.

Q. In your seven years of practice, your internship and your medical training, have you ever seen a patient whose convulsive symptoms were attributable to nothing more than emotional strain?

A. Not a true grand mal seizure, I don't recall offhand.

Q. Now, when you talk about grand mal are you speaking of an epileptic type seizure?

A. Yes. There are different types of convulsions. The type that Mr. Armstrong had was a so-called grand mal seizure in which there is initially a rigidity of all muscles and followed subsequently then by spasmodic jerking of muscles.

As I say, I don't recall ever seeing one. There are hysterical convulsions, which I have seen, but usually they are not. As I recall, I don't think I have seen any with the typical grand mal seizure.

Q. Yes, and this was a typical grand mal type seizure?

A. By history; I didn't see it, but he was brought to the hospital—

[fol. 183] Q. Yes, I understand.

What organic disorders were indicated by this series of tests, the pneumoencephalogram and findings of the different physicians who indicated that the cause of the grand mal seizure might have been organic in nature?

A. What were the findings?

Q. Yes.

A. Well, now—

Q. What organic reasons were indicated is what I am actually trying to get at, doctor.

A. Not all physicians that saw agreed in this.

Q. I understand.

A. This was mine and Dr. Rehfeldt's opinion was that he had a thing called cortical atrophy. Actually we were concerned about a brain tumor to begin with, but the pneumoencephalogram ruled that out but did suggest cortical atrophy and that was the thing that we were concerned about at that time.

Q. Have you ruled out the possibility of cortical atrophy?

A. In the light of subsequent events, I feel so, yes. Had it been cortical atrophy that would have been a progressive disease and he would have deteriorated rather than improved subsequently.

Q. Yes, and the experience of the patient has been the contrary, he has improved?

A. That's right, that's the reason I since changed.

[fol. 184] Q. Now, Doctor, you have given us your opinion that alcoholism is a symptom of emotional disturbance.

A. Yes,

Q. Is that an invariable rule, do you think all—

A. Let me make sure that the symptom is correct.

Q. Do you think all people that drink excessively have emotional problems?

A. I feel that way, yes.

Q. Does alcoholism compound an emotional problem?

A. It sure does.

Q. Almost invariably, does it not?

A. Yes, it does not solve anything at all.

Q. Yes.

A. It makes things worse.

Q. This particular patient you stated, I believe, in your testimony you had known socially and professionally?

A. Yes.

Q. For how long?

A. I don't recall when we first met. I would say probably four or five years ago, three to five years ago.

Q. Did you ever observe this patient drinking to excess prior to his admittance to the hospital?

A. No.

Q. Then you did not know him that well socially?

A. No.

[fol. 185] Q. All right. If the evidence should be that Mr. Armstrong, the patient, had drank heavily or excessively for a period of several years or a protracted period prior to his admittance to St. Joseph's Hospital on the occasion you have described, would you say that he was emotionally disturbed during this entire period?

A. Yes, I feel sure that he was.

Q. All right, and I presume you cannot hazard any opinion as to the cause of his emotional disturbance?

A. No. As I mentioned, I don't—I just don't do psychiatry and I had referred him to Dr. Holmgren for evaluation and treatment of that.

Q. Why, in your opinion, would it be six months before this man could take gainful employment after his release from the hospital? Was he physically disabled?

A. Pardon me?

Q. Was he physically disabled?

A. For a short period of time, not six months physically. I said six months or a year or three months because people that I have observed and actually followed a little bit more closely subsequently than I did Mr. Armstrong have just in general taken a prolonged period of convalescence. Now, actually I don't have any reason for saying six months. That's just—

Q. Something you pulled out of the air, isn't it?

A. Well, no, it's just on the basis of what other people [fol. 186] with similar emotional problems have done. It would not be unusual at all.

Q. Would you be greated surprised to learn that this particular patient went to work on a full-time basis in February of that year?

A. Yes, that would surprise me, and actually his subsequent courses surprise me. I think in general the vast majority of people never make a satisfactory adjustment. Now, of course, anything is possible.

Q. Would you say that this patient has made a remarkable recovery?

A. It appears to me that he has; just the fact that he stopped drinking.

Q. Yes.

A. About 90 percent of them don't.

Q. Yes. That's a very difficult thing, is it not?

A. Yes.

Mr. Hooper: I believe that's all.

Mr. Boling: That's all.

(Signature waived.)

[fol. 187]
State of Texas)
County of Tarrant)

I, Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing answers in response to the interrogatories as indicated were made before me by Dr. Gordon B. Kelly, the witness hereinbefore named, after said witness had been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and were thereafter reduced to typewriting by me and under my supervision; and the above and foregoing deposition as set forth in typewriting is a full, true, correct and complete transcript of the proceedings had at the time of taking said deposition.

I further certify the signature of the witness to his deposition was waived by all parties present at the taking of said deposition.

Given under my hand and seal of office on this the 20th day of June, A.D., 1962.

Wayne E. Silverman, Notary Public in and for Tarrant County, Texas. My Commission expires June 1, 1963. Fees $20/40 due from Respondent.

(Seal)

[fol. 188] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor

Answers and Depositions of R. Wright Armstrong, Jr., and R. Wright Armstrong, witnesses produced on behalf of the Petitioners, taken in the above styled and numbered cause on the 16th day of June, A.D., 1962, commencing at 9:00 A.M., before Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, at the offices of McGown, Gofrey, Logan & Decker, located on the Fifth Floor of the Trans-American Building, in the City of Fort Worth, County of Tarrant, State of Texas, in accordance with the agreement hereinafter set forth.

APPEARANCES:

For the Petitioners, Mr. & Mrs. Salvatore Manzo: McGown, Godfrey, Logan & Decker, By: Winfred Hooper, Jr., Esq., Trans-American Building, Fort Worth, Texas.

For the Respondent: Ronald Aultman, Esq., 412 Sinclair Building, Fort Worth, Texas, and Wallace Barton Boling, Esq., Sinclair Building, Fort Worth, Texas.

[fol. 189]

AGREEMENT

It is hereby agreed by and between the parties hereto, through their attorneys appearing herein, that the Petitioners may take the depositions of R. Wright Armstrong, Jr., and R. Wright Armstrong at this time without the service of notice of time of taking said depositions and without the issuance of a commission thereon, said depositions being taken with the same force and effect as though all requirements of the rules and statutes had been complied with.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that any and all objections to any question or answer herein may be made upon the offering of these depositions in evidence upon the trial of this cause with the same force and effect as though the witnesses were present in person and testifying from the witness stand.

It is further agreed by and between the parties hereto, through their attorneys appearing herein, that the Notary Public taking these depositions may return and file the same without the signatures of the witnesses thereto, said signatures of the witnesses being waived by all parties, and said depositions to be used on the trial of this cause with the same force and effect as though the same had been read and signed by the said witnesses.

[fol. 190]

ANSWERS AND DEPOSITION OF R. WRIGHT ARMSTRONG, JR.—Filed June 22, 1962

R. WRIGHT ARMSTRONG, JR., the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

Direct examination.

By Mr. Hooper:

Q. Your name is R. Wright Armstrong, Jr.?

A. That's right.

Q. Where do you reside?

A. 5803 El Campo.

Q. In the City of Fort Worth, Texas?

A. Yes, sir.

Q. How long have you been a resident at that address?

A. Do you mean continuously or since, actually since—

Q. Continuously this time.

A. This time, since 1959, the latter part of 1959.

Q. Are you employed?

A. Yes, I am.

Q. What is your employment?

A. I am Judge of Corporation Court No. 2, City of Fort Worth.

Q. How long have you been judge of that court?

A. Since the second week—well, you mean officially or—since the second week in February I filled in and I was concurred on in March.

[fol. 191] Q. All right, but you have actually held that bench—

A. Since the second week in February.

Q. —and been active since February 2 of this year, 1962?

A. The second week; the actual date I am not certain of.

Q. Yes, I understand.

A. But it was the second week.

Q. What is your rate of pay as judge of that court?

A. You mean gross or net?

Q. Yes; give me the gross first.

A. The gross is six forty-seven, I believe.

Q. $647 per month?

A. Per month.

Q. Are you paid monthly or by week?

A. Paid every two weeks.

Q. What is your net take-home pay?

A. Each two weeks?

Q. Yes.

A. Two thirty-nine forty-four.

Q. And you have been drawing that pay continuously since the second week in February of 1962, is that correct?

A. 1962, that's correct.

Q. Prior to your taking the bench as permanent judge of the Corporation Court in the City of Fort Worth, how were you employed?

A. I was practicing law.

[fol. 192] Q. As a private practitioner?

A. Private practitioner.

Q. Did you have a general practice?

A. Well, more or less general, yes.

Q. Were you a civil or criminal or mixed attorney?

A. Primarily civil.

Q. All right. Did you handle any criminal matters at all?

A. Only in the matter of traffic work.

Q. All right. Where did you office as a practicing attorney?

A. At 1015 Fort Worth National Bank Building.

Q. All right. Can you tell us how long you engaged in the practice of law prior to taking the bench of the Corporation Court continuously?

A. Continuously from the end of the spring of 1960. The exact date I am not sure.

Q. I understand.

Can you give us the month, whether it was May or June? You say the end of spring would be about June.

A. I believe it was in actually June or July. July is actually when I went up to that office.

Q. Now, what did you earn as a practicing attorney during that period of time from July of 1960 until February of '62?

A. Very little. The majority of the work that I did there [fol. 193] was more or less in the appellate nature for Elmo Irby in the form of briefing and drawing up pleadings with very few clients of my own, with the exception of some clients that I performed work for in order to pay off some debts.

Q. Mr. Armstrong, you understand that your earning ability is very much in issue in the litigation pending in El Paso, do you not?

A. My earning ability?

Q. Yes.

A. Yes, sir, I do.

Q. And your actual earnings during the period of time following your divorce from the former Mrs. Armstrong, now Mrs. Manzo, down to the present time is an important issue in that case.

A. Yes, I understand that.

Q. And because of the importance of that question and that issue you have had the deposition of your former associate, Mr. Elmo Irby, taken during this week in the City of Fort Worth, is that correct?

A. That is correct.

Q. Then I assume that appreciating the importance of that issue you have made an accurate audit of your earnings as a private practitioner and can give us the exact figures, is that correct?

A. No, that is not correct. I cannot give you the exact [fol. 194] figures at this time. I could only approximate.

Q. I'll ask you first, then, to approximate your earnings and then I will ask you and your attorneys if you will be willing to produce and attach to this deposition as Exhibit A, and following, your income tax return statement forms, your duplicate taxpayer's return form, for the years 1960, 1961 and 1959. I have asked you two questions and you may answer them as you see fit, and consult with your attorneys about the income tax forms, if you wish.

A. I will agree on the 1961 income tax form. The other one is not available to me right now.

Q. Would you state, please, why it is not available?

A. It was filled out by a bookkeeper friend of mine who is currently on active duty with the 49th Armored Division.

Q. I assume that his records will be here in the City of Fort Worth, will they not, and that his wife or someone would have access to them so that you could obtain them?

A. I don't know.

Q. We will respectfully demand production of that income tax return form and request that you make every effort to make it available and attach it to the deposition along with the other form.

Are you on, at the present time, a quarterly installment basis on your Federal income taxes?

A. No.

[fol. 195] Q. You are on a W2 basis?

A. Yes.

Q. All right. If you would, give us as best you can at the present time your estimate of what your earnings were while you were engaged in the private practice.

A. For which year?

Q. Well, we are primarily interested, of course, in all of your earnings during all of your private practice, which I understand began in June or July of 1960 and ended the second week in February of 1962. You can break it down any way you want to, by month, by year or the entire period.

A. I would almost have to break it down by year. My estimate—and it's just a guess, I have no idea right now—for 1960 was—I don't have in front of me those statements that Elmo put into the deposition earlier in the week. That was all that I earned in 1960 as a private practitioner, the checks that he paid me.

There was one, I believe, for some $37.50—this is strictly testing my memory—and one for $50.

Q. You did file a Federal income tax return during that year, though?

A. My bookkeeper filed it, yes, sir.

Q. Now, can you go on from there?

A. 1961 my estimate would be somewhere in the neighborhood of six to seven hundred dollars.

[fol. 196] Q. How did you pay your office overhead in the practice of law on that type of earnings?

A. I didn't have any overhead.

Q. All right. How did it happen that you did not have overhead?

A. Elmo allowed me the use of his office and the use of his library, the use of his stenographer, the use of his postage and the use of his office supplies.

Q. Free of charge?

A. Free of charge.

Q. All right. Now, it is equally obvious t[illegible] t your earnings would not defray your living expenses during that period of time. How did you support yourself?

A. I didn't support myself. I lived at home with my parents.

Q. All right. Did they assist in supporting you?

A. I ate there.

Q. All right.

A. Without charge.

Q. Did your parents also furnish housing for you and utilities, gas, lights, telephone, water, and so on?

A. Yes, they did.

Q. And your food?

A. Yes.

Q. Did they also purchase your clothing?

[fol. 197] A. What clothing that I purchased, they did.

Q. Prior to becoming permanent judge of the Corporation Court No. 2 in Tarrant County, the City of Fort Worth, did you occupy that bench on any other occasions?

A. Yes, I did.

Q. Can you tell us when and on approximately how many occasions you did occupy the bench and how you were paid?

A. Actually when would be a little difficult for me to guess that right now.

Q. Would it have been during the period you were in the private practice, from July of '60 to February of '62?

A. It would have been during the year 1961.

Q. All right. Can you tell us how you were paid for serving on the bench during that period of time?

A. You mean was I paid by check?

Q. No; were you paid a per diem or by the hour or by the month or just how did they pay you?

A. I was paid by the day.

Q. All right. Can you tell us how much the City paid you for substitute judge duties during the year 1961?

A. Yes, sir.

Q. How much?

A. $40 a day.

Q. How many days did you so serve and how much did you earn all together during the year 1961?

[fol. 198] A. This is where we are getting into the approximation, because sometimes this ran in a one day cycle. On a couple of occasions one of the judges was sick and I filled in just for the day. That is mostly—most all of that was in this estimate for my income for that year.

Q. I see.

A. Was money made from the City.

Q. Now, prior to your commencing the private practice under the arrangement with Mr. Irby which you have described for us, how were you employed?

A. For a brief period during the first part of 1960 I was employed by the City as Assistant City Attorney.

Q. Would this have been from the month of February through the month of July of 1960?

A. Not that long, I don't believe. I would have to check my memory on that. It was some time, I believe, in the latter part of February that I did go to work for them. Actual termination I was going to guess in June.

Q. All right. Would you be so kind as to check the city records and get the exact dates of your employment as City Attorney—

A. Yes, I can.

Q. —for the City of Fort Worth, and fill it in at this point in the deposition when you read it.

A. (Nods head "Yes.")

[fol. 199] Mr. Hooper: The witness has so agreed by nodding his head.

The Witness: Excuse me; I forget.

By Mr. Hooper:

Q. What was your rate of pay as City Attorney?

A. Now, the gross pay I just couldn't even guess that without checking. The take-home pay I assume is what you more or less had in mind?

Q. Yes.

A. That ran somewhere in the neighborhood—and once again I would have to guess at that, it's been a while ago—of a hundred and sixty dollars every two weeks.

Q. That would be about $320 a month—

A. Something like that.

Q. —take-home, or a little bit more than that?

A. A little bit more.

Q. And you were paid every two weeks by the City?

A. Yes, sir.

Q. Now, prior to your employment with the City of Fort Worth as City Attorney, which was during the spring season of the year 1960, how were you employed?

A. Prior to that actually I didn't have any job.

Q. All right. Immediately prior to it you were un-[fol. 200] employed. What was your last employment prior to taking that position?

A. Prior to taking that position my last employment was with Trinity Cement Company, which is a division of General Portland Cement Company.

Q. Was that here in the City of Fort Worth?

A. Yes, sir.

Q. What did you do for Trinity Cement Company?

A. My title was sales representative.

Q. How were you paid?

A. Every two weeks.

Q. What was the amount of your pay?

A. Well, I would have to guess again; I am not sure. It was in the neighborhood of—in the neighborhood of $250 every two weeks.

Q. It would be approximately $500 a month, or a little over that?

A. Possibly a little over that.

Q. All right. When did you terminate your employment with the Trinity Cement Company?

A. I was taken off the payroll of Trinity Cement Company in December of 1959.

Q. Did you draw pay for the month of December '59?

A. No, sir.

Q. Then November of '59 was the last monthly pay you received?

[fol. 201] A. This again is a guess on my part. I would guess that that would be the last pay.

Q. All right. Now, the records of the child support office of Tarrant County show, and the final judgment in the divorce action here in Tarrant County between yourself and your former wife, Mrs. Manzo, show that you were ordered by the District Court here in Tarrant County to pay monthly contributions to the support of your daughter, Molly Page, is that correct?

A. That is correct.

Q. What was the amount set by the court for child support?

A. $50 a month.

Q. I will ask you if the $50 per month figure set by the judgment of the court was a figure agreed to by yourself and myself acting as attorney for then Mrs. Armstrong, now Mrs. Manzo, your former wife?

A. I assume that it was, I mean actually I had never met you until afterwards, I mean it was agreeable to me.

Q. Well, let me ask you this. Before that judgment was entered, were you not consulted as to whether you would be able to pay that amount and would agree to pay it?

A. Yes, I was consulted.

Q. And you did so indicate, did you not?

A. Yes, I did.

Q. All right.

[fol. 202] A. I am sorry; I didn't quite understand you.

Q. Well, perhaps my question was misleading, and I apologize if it was.

Now, the child support records also show that during the month of November of the year 1959, which was, I believe, the month in which the divorce was granted, you did make the $50 payment provided for in the judgment of the court. Does that seem correct to you?

A. Yes, it does. I haven't checked it recently, but I did make a payment.

Q. All right, and that you did not make the next payment in December of 1959 nor the payment due in January of 1959 or January of 1960, excuse me, and that in February of 1960 you made a $150 payment, catching up your rearage, and bringing your child support current through the month of February of 1960. Does that seem correct to you?

A. Yes, sir, it seems correct.

Q. All right. Now, if my recollection of your testimony is accurate, you took employment approximately in the month of February of 1960 as City Attorney for the City of Fort Worth. You were unemployed and not paid during December and January preceding that employment, is that correct?

A. Yes, sir.

Q. And that would explain how you got the hundred and fifty dollars and made the payment in February of 1960? [fol. 203] A. I guess. I mean as far as—

Q. Well, let me just ask it point blank, then. Where did you get the hundred and fifty bucks?

A. That must be where I got it.

Q. All right. Now, then, the records in the child support office here in Tarrant County indicate that there have been no further payments made since that February payment of a hundred and fifty dollars by you to the support of your child, is that correct?

A. Do you mind waiting just a second?

(Discussion off the record.)

(Question read.)

A. I don't know what the records reflect in the child support office. There have been other payments made in other forms.

Q. Well, I am primarily concerned in asking that question, I am asking it in that form with your obedience to and compliance with the order of the District Court ordering you to pay to the child support office of Tarrant County $50 per month to the support of your daughter, and we'll get into these other things later on, but for the present time I would like you to confine your answer and your thinking to payments made pursuant to that court order.

Now, what's your answer?

A. By that you mean to the child support office?

[fol. 204] Q. Yes.

A. No, I don't know, I mean I have not been up to the child support office.

Q. Have you made any payments there since February of 1960?

A. No.

Q. All right. During the period following the divorce from the former Mrs. Armstrong, who is now remarried and is Mrs. Manzo, down to the present time have you contacted the District Court of Tarrant County, Texas, and made an application for reduction of those child support payments based on changed conditions?

A. No, sir.

Q. You are an attorney, are you not, Mr. Armstrong?

A. Yes, sir.

Q. You hold a license to practice law and have practiced law in the State of Texas?

A. Yes, sir.

Q. And you are familiar with the laws concerning the support of minor children by divorced parents, are you not?

A. That's a rather broad question when you ask if I am familiar with the laws. I am not certain that I can answer that one way or the other.

Q. You are familiar with the fact that it is possible for one whose condition has changed since a court order set- [fol. 205] ting child support responsibility to petition the court for a change in the order, are you not?

A. I am now. I hadn't been, I don't—I never have taken cases like this.

Q. Did you ever at any time make any attempt to explain either to the court or to your former wife, Mrs. Manzo, why you were not making the child support payments as required by the court order?

A. I explained that to her in person here.

Q. All right. When was that?

A. During the period that I was in the hospital when she visited me in December of 1959.

Q. All right. Now, how did you happen to become hospitalized and when were you hospitalized?

A. The exact date when I was hospitalized I just don't know. I think it was either December the 21st or the 22nd, one of those two.

Q. Just before Christmas of '59?

A. Just before Christmas, yes, sir.

Q. And how long did you stay in the hospital?

A. Approximately 15 days. I was there for both Christmas and New Year's.

Q. Who was your attending physician?

A. Gordon B. Kelly.

Q. What was the cause of your hospitalization?

[fol. 206] A. Complete collapse.

Q. Is this doctor whose name you have given us a specialist?

A. General practitioner, I believe.

Q. All right. What type of treatment did you receive in the hospital?

A. Gosh, I am not sure. There were a number of pills, injections, tests made. I just couldn't—I wouldn't be qualified to answer that.

Q. Did the doctor make all of these tests?

A. I don't believe all of them were made by this one doctor. They were all made either by him or under his supervision.

Q. What type of tests were given you?

A. I couldn't tell you all the tests that were given me because I don't know.

Q. Were they physical?

A. Some of them were physical. Some of them were, oh, these diagram sets, you know, that psychologists give you. Now, what you call that I wouldn't know.

Q. Did you receive any psychiatric treatment?

A. Yes.

Q. From whom?

A. Dr. Robert Holmgren, H-o-l-m-g-r-e-n.

Q. Is he a practicing psychiatrist in Fort Worth?

A. Yes, sir.

[fol. 207] Q. Did he indicate to you what his appraisal of your condition was?

A. Not to me, no, sir.

Q. Then he did not indicate to you what he thought your condition was?

A. No, sir.

Q. Did the other doctor indicate to you what he thought your condition was?

A. You are speaking of Dr. Kelly?

Q. Yes.

A. Not at that time, no, sir.

Q. But you were released in about two weeks or 15 days?

A. About 15 days, more or less. I was released to go home with my parents.

Q. All right. Did you receive further treatment after your release from the hospital?

A. Yes, sir.

Q. Who treated you?

A. Dr. Kelly and Dr. Holmgren.

Q. For how long?

A. I would have to guess on that. Approximately three or four months.

Q. Was this by office visit to the doctor?

A. By office visit to the doctor, yes, sir.

Q. Did you receive any medication from either or both of [fol. 208] these doctors?

A. Yes, sir.

Q. What was it?

A. I couldn't tell you. I just don't know.

Q. Were you given tranquilizers?

A. Not by them, no sir.

Q. All right. Did you take tranquilizers?

A. No, sir. Not to my knowledge; I better answer it that way.

Q. Were you given injections?

A. After I left the hospital?

Q. Yes.

A. No, sir.

Q. How did you pay for these doctors and the hospitalization.

A. The folks paid for it.

Q. You did not have a policy of insurance that paid for any of the medical expenses?

A. Yes, sir; but it didn't cover it all.

Q. I see. What kind of hospitalization did you have and how much of it did it cover?

A. My policy had been with the Trinity Cement Company with Blue Cross and Blue Shield and the exact figures I am not certain of, but it didn't take care of it all.

Q. And your father paid the balance?

A. Yes, sir.

[fol. 209] Q. Which hospital were you in?

A. St. Joseph's Hospital.

Q. Have you been hospitalized since that time?

A. No, sir.

Q. Have you been treated by any other doctor since that time?

A. Yes, sir.

Q. Who?

A. Dr. Arch B. McNeill, M-c-N-e-i-l-l.

Q. All right. What condition has Dr. McNeill treated you for?

A. Dr. McNeill has treated—well, perhaps I better give you a more or less general explanation of that, because what you would call it I don't know. It was a condition caused by an honest sincere attempt to quit heavy drinking. He assisted me in it. He's a specialist—I believe on the door it says—in internal medicine.

Q. Do you drink now?

A. No, sir.

Q. When did you stop drinking entirely?

A. In the summer of 1960.

Q. Was that when Dr. McNeill started treating you or had he been treating you some before that?

A. No, he started treating me the latter part of the summer of 1960.

[fol. 210] Q. Did heavy drinking contribute to your hospitalization in St. Joseph's?

A. I don't believe that I can answer that because I don't know.

Q. Were you drinking heavily at the time you were admitted to the hospital?

A. Yes, sir.

Q. All right. Did this continue until the termination date that you have given us?

A. More or less, yes, sir.

Q. All right. Now, Mr. Armstrong, as you and I both know what constitutes heavy drinking is a subjective thing depending entirely on the individual and his opinions. How much did you drink when you were drinking heavily?

A. Well, I don't know. I mean I don't—

Q. Did you buy your own liquor or did someone buy it for you?

A. Both.

Q. How many bottles would you consume in a period of 24 hours?

A. Not even one, I could say that.

Q. How many fifths would you consume in a period of a week?

A. I don't know. I just couldn't say.

Q. As many as seven?

[fol. 211] A. I could say no on that.

Q. As many as five?

A. I don't know, I mean you are breaking it down rather definitely and I just—when you say seven you are indicating one a day and that I can say is not true. If you are saying five. I don't know.

Q. Well, would it be nearer five or one?

A. Probably nearer five than one.

Q. What did you drink, scotch, bourbon, vodka?

A. Oh—

Q. Everything?

A. I don't know; probably a little bit of everything.

Q. As a matter of fact, your excessive drinking was one of the reasons why you were divorced from the former Mrs. Armstrong, was it not?

A. Are you asking my opinion? I don't believe so.

Q. All right. In your opinion it was not?

A. Yes, sir.

Q. You have filed a motion for new trial in a proceeding pending in El Paso County wherein your natural daughter, Molly Page, has been adopted by her mother, Mrs. Manzo, and her present husband to whom she has remarried since her divorce from you, Colonel Manzo, the effect of the adoption, of course, being to change the name of the child from Armstrong to Manzo.

Do you object to this change in name?

[fol. 212] A. Yes, sir.

Q. For what reason?

A. Oh, for the natural reason of a father to have a child bear his own name.

Q. Let me ask you this. Aside from the personal or selfish feeling that any of us would have, which you have just expressed to us, do you feel that the child living in a family group and attending school with other children would be better bearing the name Armstrong or the name Manzo, and here I am asking you what you feel is best for the child and not for yourself?

A. Very sincerely I can answer you that what I think is best for the child is for her to retain her father's name.

Q. Why is that?

A. In order that the child will not forget her natural parent who loves her very much.

Q. Well—

A. And not become a part of something that the natural parent knows nothing.

Q. Is it your feeling that this change of name will work as a detriment to you, then?

A. To me personally?

Q. Yes.

A. No, sir.

Q. You feel that it will work to the detriment of the [fol. 213] child?

A. Yes, sir.

Q. I don't understand how you feel that it will be detrimental to this little girl to be called Manzo when she's living with a man and woman bearing that surname and attending school with other children, them knowing that those people are her parents. Would you explain it again to me?

A. Well, you have made a long statement there, part of which I would have to disagree with you on the fact.

Q. Well, all right.

A. You have stated, for one thing, that the children at the school know that these people are their parents. I don't know that and I doubt if you do either, because that is not a fact. Both of them are not her parents.

Q. Well, do you not think that it would be a source of constant and continual embarrassment to the child to have to explain to her classmates what the family relationship and situation is? That's what I am asking you, in essence.

A. In essence, if that's what you are asking me, then, I would say that I wouldn't consider it a constant source of embarrassment.

Q. You would not?

A. No; quite the contrary.

Q. All right. If you were given the privilege of visitation with the child as her natural father, despite these adoption [fol. 214] proceedings and the change in her name, would you object to the adoption proceeding?

A. Yes, sir.

Q. Why?

A. I believe we have explained that, but I'll explain it again.

Q. Well, I don't understand it, so go ahead.

A. All right. I have objected to the adoption proceedings because I don't consider it in the best interest of the little girl.

Q. Where did you purchase the liquor that you drank when you were drinking heavily?

A. Lots of places.

Q. Do you have any record of your liquor purchases? Can you establish it in any way?

A. Well, no, not—I don't believe I could.

Q. Would you say that the scotch you drank had a cost of approximately $6 per fifth?

A. No, I wouldn't.

Q. What would it come more nearer averaging?

A. Assuming that I drink scotch, as I assume that's what you are asking?

Q. You said you drank everything.

A. Yes, sir.

Q. I asked you about four different kinds.

[fol. 215] A. Yes, sir. I would say it would come nearer to $4.

Q. All right, scotch $4, and what price bourbon would you buy on the average?

A. It varies so much it would be very difficult for me.

Q. I understand. That's why I am asking you.

A. It would be very difficult for me to say on that because it varies a great deal.

Q. You gave me an average on scotch.

A. That doesn't vary as much.

Q. I am also interested in where you get that scotch at $4 a bottle. What about the bourbon, now, would you average it three and a half, four dollars, three seventy-five?

A. I would probably average that, if I bought much, at three fifty, I guess.

Q. All right. Did you drink vodka?

A. Some.

Q. About what would it cost per fifth?

A. I couldn't even guess on that now.

Q. All right. Any other varieties or were those the three principal ones? Did you drink gin?

A. Some.

Q. About what would it run?

A. Oh, I guess around two and a half, three dollars.

Q. What did you prefer, bourbon or scotch, or which of the brands, varieties?

[fol. 216] A. I didn't have any preference.

Q. I am led to understand that you over the years have been a lover of music and that you have tried to keep and maintain a good library of good recordings, is that correct?

A. That is correct.

Q. Does that practice continue?

A. No, sir, necessarily not.

Q. When did it discontinue?

A. It discontinued after the divorce.

Q. Then you have purchased no records or recordings at all since your divorce?

A. I have purchased a few, but not many.

Q. All right. Where do you purchase your recordings?

A. Now, when you say purchase, I assume you mean those that are paid for?

Q. Yes.

A. Well, I have—

Q. I am not interested in what's given to you but what you actually purchased.

A. Or what you trade out in the way of fees?

Q. No—or trades, yes, now, if you have received some as fees I would like to know about them.

A. Oh, one or two primarily from Rowland's Record Shop out in Ridglea.

Q. Did you represent them?

[fol. 217] A. I have represented Mr. Rowland for petty affairs.

Q. For years?

A. No, I wouldn't say for years; for two or three years, just on petty affairs.

Q. About how much in cash value have you received in records by way of fees from Rowland's Record Shop?

A. You mean since the divorce?

Q. Yes.

A. $15 to $20.

Q. All right, and in addition to that have you purchased any other records or recordings?

A. No, sir.

Q. You have paid cash for none at all, is that right?

A. I have paid cash for one or two.

Q. Albums or records?

A. Records.

Q. Were they purchased there at Rowland's?

A. Yes, sir.

Q. And when were they bought?

A. Late this spring.

Q. Since you became judge of the Corporation Court?

A. Yes, sir.

Q. Do you have a hi-fi set that you play these records on or a stereo set?

A. I don't know if you could call it that or not. It's a [fol. 218] hodgepodge which, most of which was given to me by my grandmother upon graduation from law school and which I put together myself.

Q. This recording equipment, of course, is very expensive, though, your speakers and amplifier system, and so on?

A. I can tell you that the whole affair that she gave me was less than a hundred dollars, but that was back in 1950.

Q. And that's the only set you have?

A. Yes, sir.

Q. All right. Have you had occasion to check or become familiar with your credit rating recently?

A. No, sir, I wasn't worried about my rating. I was sure that it was bad.

Q. Do you owe anybody any money now?

A. Yes, sir.

Q. Who?

A. I owe for a couple of suits which I just purchased.

Q. Where did you buy these suits?

A. Jack Caudle.

Q. What price suits are they; how much do you owe?

A. A hundred and fifty dollars.

Q. And that's the cost of both suits or did you pay some?

A. Cost of both.

Q. All right. Then you paid nothing down on the account?

A. No, sir.

[fol. 219] Q. But the two suits cost a hundred and fifty dollars?

A. Seventy-five each, yes, sir.

Q. All right. Have you bought any other clothing than these two suits since the divorce?

A. I bought a couple of shirts and a couple of pair of socks and a couple of ties from John Ashe last year.

Q. But you bought no suits?

A. Myself, no, sir.

Q. All right. Have you had some suits bought for you by your parents?

A. One suit.

Q. All right. Where was it bought?

A. At Garnette's.

Q. Do you know what was paid for it?

A. I am guessing. I think around $55. I think that was the limit that was put on me.

Q. Now, the three clothing stores you have mentioned, John L. Ashe, Jack Caudle and Garnette's Men Shop, here in the City of Forth Worth are the three of the best men's clothiers in the city, are they not?

A. They are good clothing stores.

Q. Yes.

Do you own an automobile?

A. Now, yes, sir.

Q. All right. What make and model?

[fol. 220] A. It's a Pontiac.

Q. And the model?

A. Catalina.

Q. What year?

A. '62.

Q. Where did you purchase this?

A. Bill McDavid.

Q. When did you buy it?

A. In March.

Q. Did you trade another car in on it?

A. No, sir; I didn't have a car.

Q. All right. What did you pay as the purchase price of the automobile, if you can recall?

A. You mean the total price?

Q. Yes.

A. Of course, I really have paid very little on it.

Q. Well, what is the purchase price of the car?

A. The exact figure I am not certain. It was just under 3,000, I believe.

Q. Is it air conditioned?

A. It has a unit in it, yes, sir.

Q. Did you buy it extra?

A. The unit extra?

Q. Yes.

A. That was part of the over-all deal from Bill McDavid.

[fol. 221] Q. I see, and it is an air conditioned Pontiac Catalina?

A. Yes, sir.

Q. And only cost $3,000?

A. Yes, sir.

Q. Pretty good deal.

A. I am an attorney; I have done some work for both.

Q. Do you owe any money to the bank at the present time?

A. At the present time, no, sir.

Q. What bank do you do business with?

A. Well, I try not to do any business with any of them right now since I paid my bank debt off, but I used to do business with Union Bank.

Q. How much did you owe Union Bank at the time of your divorce?

A. I would have to guess on that. I guess around $500 or more, not—give or take a few.

Q. Did you pay that $500 indebtedness off subsequent to the divorce and prior to this time?

A. Yes, sir.

Q. Have you had any other bank loans during that period of time?

A. You mean that I borrowed since the divorce?

Q. Yes, that's right.

A. I have not borrowed since, except to renew this note.

Q. I understand.

[fol. 222] A. Yes.

Q. You have not made any new bank loans?

A. Oh, no, sir.

Q. All right. Have you incurred any other obligations except bank loans other than the purchase of this automobile?

A. Once again primarily you are speaking of after the divorce? There has been a bank note paid off since the divorce that was incurred prior to the divorce.

Q. Are you talking about this $500?

A. Oh, no, sir, there was another.

Q. All right. What was its amount?

A. That amount was, if I am not mistaken, $2,400.

Q. Was it with the Union Bank & Trust?

A. No. That was with Fort Worth National Bank.

Q. When was it paid off?

A. Exactly, I am not sure, since my father finished paying it off. It was last year some time that it was finished paying off.

Q. How much of the $2,400 balance did you pay after the divorce?

A. After the divorce?

Q. Yes, sir.

A. Oh, if I made a payment I would be surprised after the divorce. I don't believe that I did.

Q. All right. Then your father paid whatever balance [fol. 223] was due on that note after the divorce.

A. Yes, sir.

Q. All right. But you paid the $500 note to Union Bank & Trust yourself?

A. All by myself.

Q. All right. Any other debts incurred subsequent to the divorce down to the present time that you have paid?

Mr. Boling: Excuse me; I didn't understand you. Did you say incurred after the divorce?

Mr. Hooper: Yes.

A. Do you mind if I think for a second on that? That covers—

By Mr. Hooper:

Q. Take your time.

A. Offhand, I don't recall any.

Q. Now, the court order divorcing you from your former wife, Mrs. Manzo, gave custody of your daughter, Molly Page, to Mrs. Armstrong at that time, Mrs. Manzo now, is that correct?

A. That's correct.

Q. And also provided for visitation of yourself with the child, is that correct?

A. Yes, sir.

Q. Subsequent to the divorce, I understand that Mrs. Manzo and your daughter moved to El Paso, is that correct?

A. Did you say subsequent to the divorce?

[fol. 224] Q. Yes, right after the divorce.

A. She moved there before the divorce.

Q. Was it before it?

A. Yes, sir.

Q. All right, and has been living there in El Paso since?

A. As far as I know.

Q. All right. Do you know where she and the girl live? Have you been there?

A. No, sir, I have never been there.

Q. You have never been out to the house?

A. No, sir.

Q. Have you gone to El Paso to visit your daughter?

A. No, sir.

Q. Has your daughter visited with you since the divorce?

A. Yes, sir.

Q. Was that visit here in Fort Worth?

A. Yes, sir.

Q. Can you tell me how many visits you have had with Molly Page?

A. You mean in number?

Q. Yes.

A. Four.

Q. Do you recall when they were?

A. One was in the summer of 1960 and one was in Christmas of 1960 and one was in the summer of 1961 and [fol. 225] one was in Christmas of 1961.

Q. All right. Was this under some agreement with your former wife as to visitation?

A. Yes, sir.

Q. That you would have the girl during the Christmas season and some time during the summer of each year?

A. No, the times were not set out as such. Actually—

Q. I understand that the judgment itself did not set out any visitation schedule, but this was arranged?

A. This was arranged through correspondence between my mother and my former wife.

Q. All right and to your knowledge, visitation with the child has never been denied to you, is that correct.

A. That's not correct.

Q. All right. When has it been denied?

A. It was denied to me during the early part of the summer of 1960.

Q. What were the circumstances?

A. The circumstances were that my mother and my father were in El Paso—pardon me, were in San Angelo at a time when she was there with the child and at which time she refused to let my mother and my father have the child.

Q. Well, now, I am not talking about visitation with the grandparents; I am talking about visitation with you, Mr. Armstrong.

[fol. 226] A. With the understanding the child was to be brought back to Fort Worth to see me.

Q. I see. Had there been any prior agreement that you were to have the child at that time?

A. There were no prior agreements as to any time.

Q. I see. How did your parents and Mrs. Manzo happen to be in San Angelo at the same time?

A. Now, how Mrs. Manzo happened to be there I couldn't say, because I don't know. My parents happened to be there because my father was attending a meeting of the West Texas Chamber of Commerce.

Q. Was this, then, a chance meeting between them?

A. Not necessarily; they knew about it a week or two in advance.

Q. They knew that she would be there a week or two in advance?

A. My parents?

Q. Yes.

A. No, they didn't know she would be there a week or two in advance.

Q. I see. But they just happened to run into her there in San Angelo?

A. No, they didn't just happen to run into her. They called her.

Q. They called her?

[fol. 227] A. Yes, sir.

Q. Did she know that they were going to be there?

A. I don't know.

Q. Then, as far as you know, the first notice she had of any request for visitation was when they called her there in San Angelo?

A. I would have to answer that yes, as far as I know.

Q. You didn't call her yourself?

A. No, sir.

Q. Or have any communication with her at all?

A. No, sir.

Q. So she didn't deny you visitation?

A. Yes, I consider that she did.

Q. Because your parents have told you that they called her and she said no?

A. Because she wrote me and explained that she had said no.

Q. I see. Did she explain to you why?

A. Yes, sir.

Q. Why?

A. I would have to re-look at the letter again. It was a lot of general terms describing the child being upset at a proposed trip back to El Paso by air and that particular phrase I remember. The rest of it is just more or less in general terms.

Q. All right. Did you know that your parents were going [fol. 228] to request that the child come back to Fort Worth with them?

A. Yes, sir.

Q. How did you know that the child was in San Angelo?

A. I have forgotten how I learned that. I have just forgotten.

Q. Did you ever familiarize yourself with what the conditions surrounding the home of the child in El Paso have been?

A. By that do you mean did I hire somebody to look into it?

Q. No, I mean did you from any source find out what kind of a home life she had?

A. Only from conversations that my mother had with her.

Q. With the child?

A. With my ex-wife.

Q. I see. Would you tell us what your impression is of the kind of home life Molly Page has been having?

A. By that do you mean whether she is well fed and well clothed?

Q. Yes, whether she is properly taken care of.

A. My impression is that she is, certainly.

Q. All right, and as to other conditions what is your impression?

A. As to other conditions, by that what do you mean?

Q. Well, the environmental situation there; do you think that child is unhappy or well adjusted or do you think the [fol. 229] parents are creating an unwholesome home atmosphere or wholesome home atmosphere or exactly what is your impression, or do you have any impression?

A. Oh, a fleeting impression only that the child is not adequately informed as to who her father is, which I consider unwholesome.

Q. How old is this child?

A. Five this month.

Q. Do you try to make it clear to the child what her parentage is when she visits with you here in Fort Worth?

A. I try to not get involved in opening any wounds of that type. I try to keep my feelings, my personal feelings like that, to myself.

Q. What do you mean by wounds, Mr. Armstrong?

A. The child to me obviously has been led to believe and thinks that Colonel Manzo is her father. The question of my liking or disliking is rather of relative unimportance to the child's happiness and I try not to disturb that.

Q. Does your mother follow that same pattern?

A. I couldn't answer for her, because I am not with her all the time.

Q. All right. On the occasions when you are with her and the child, what is your observation?

A. As to what?

Q. As to whether your mother maintains the same atti- [fol. 230] tude towards the parentage of the child and the problem you have just described for us—

A. When I am with her—

Q. —as you do.

A. —my mother defers from the subject the same as I have.

Q. I see. Do you know how much the Manzos earn?

A. No, sir.

Q. You have no idea?

A. No, sir.

Q. Have you ever had any idea?

A. Oh, I'll have to answer that yes or no. My brother-in-law is quite active in the reserve and he has mentioned from time to time a pay scale which with my brief experience in the service I know varies according to all kinds of conditions up and down by as much as a hundred or two hundred dollars, so it's very difficult without knowing all the things.

Q. Have you inquired actually to find out how much he is making?

A. No, sir, I have not inquired.

Q. You never have?

A. No, sir.

Q. So you have no idea how much he is making?

A. No, sir, I don't.

Q. What about the earnings of your former wife; have [fol. 231] you ever made any inquiry as to how much she earns or has ever earned since the divorce?

A. My understanding is that she was employed as a school teacher for a period of time.

Q. All right.

A. What she made I don't know.

Q. Was this prior to her marriage to Colonel Manzo?

A. Yes, sir.

Q. But you never made any inquiry as to how much she was earning?

A. Only to the extent that she was employed and lived with her grandmother.

Q. Now, at one point in the deposition when I was asking you about your child support payments here in the child support office in Tarrant County, you mentioned that you had made other contributions to the child than through the child support office.

Would you describe those for us, please, and tell us what they were.

A. Well, for one, when the child visited me last Christmas I purchased some clothes for the child; three dresses and a purse.

For another, I requested that the majority of the money from the sale of the house go to her.

Q. I am talking about after the divorce, Mr. Armstrong, not your property settlement, not the child support payment that the court ordered you to make, but contributions [fol. 232] to this child that you have made since the divorce.

A. Well, of course, that was after the divorce, I mean you just didn't want to mention that.

Q. Well, if you had some cash money that came to you out of the sale of property that you and your wife owned at the time you were divorced and you took this money and gave it to that child, then, tell us about that.

A. You mean gave money to the child?

Q. In any manner.

A. I requested that the money be sent to the mother for the child.

Q. What money?

A. The majority of the money realized from the sale of the house.

Q. Now, are you talking about the money that you were supposed to receive from the sale of the house under the property settlement agreement?

A. I am talking about the money that we were supposed to receive from the sale of the house.

Q. From the sale of the house she was supposed to receive almost all of the money that represented your equity in the house when it was sold, was she not, under the property settlement agreement?

A. That was not my understanding, no, sir.

Q. You have seen the property settlement agreement?

[fol. 233] A. I don't recall it.

Q. You do remember that your former wife had a very substantial separate property equity in that house, do you not?

A. You mean before we were married, I mean before we purchased the house?

Q. Before you were divorced.

A. Oh, excuse me; yes, sir. She put in some separate property in it, yes, sir.

Q. And that was her money?

A. Yes, sir.

Q. And in the property settlement agreement the separate property that your wife had was recognized, was it not?

A. I don't recall. The only agreement I recall was that it was to be disposed of on a fifty-fifty basis.

Q. All right. Then you were supposed to receive half of the proceeds of the equity in the house and your former wife to receive the other half, is that correct?

A. That was my understanding, yes, sir.

Q. All right. Now, when the property was sold, how much of it were you supposed to have received?

A. These, of course, are approximate figures. You are speaking of the cash; that's about all that it amounted to.

Q. That's right.

A. It ran to around a thousand dollars, and half of that amount would be—

[fol. 234] Q. Five hundred?

A. Somewheres or less, it was a little bit under a thousand, I believe, the total amount we received.

Q. Your share was approximately five hundred?

A. Yes, sir.

Q. Did you receive all of it?

A. No, sir. I requested that most of it be sent to her.

Q. To whom?

A. To my former wife.

Q. All right. To whom did you make this request?

A. To Fred Crusemann.

Q. Who is he?

A. He is an attorney.

Q. How did you happen to make that request to him?

A. I was concerned about my future ability to give the wife anything.

Q. Well, how did Mr. Crusemann happen to have any disposal of this money?

A. He handled the closing out of the sale.

Q. All right, and you instructed him to send how much money to your wife and give you how much?

A. I asked him to send—to give me a little over a hundred dollars and to send whatever else he could to her, whatever else we got. At that time I believe the actual amount was still in doubt as to what we would get, at least [fol. 235] if it wasn't I didn't—something like four fifty-four hundred fifty.

Q. Was supposed to come to you?

A. Yes, sir—no, was supposed to go to her from me.

Q. I see. Then to your knowledge was that money sent to her?

A. To my knowledge it was, yes, sir.

Q. All right. Now, was this money sent to her as a recognition of the disparity in her equity in the community equity in the property or on what basis?

A. It was sent to her because as far as I am concerned at the time I didn't have any income and I couldn't see at that time any coming up.

Q. It was not intended as child support, was it?

A. Yes, sir.

Q. Then why didn't you have it paid to the child support office under the court's order?

A. It just seemed simpler to me at the time to have it mailed directly to her.

Mr. Hooper: I believe that's all.

Mr. Boling: That's all.

(Signature waived.)

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[fol. 236]

ANSWERS AND DEPOSITIONS OF R. WRIGHT ARMSTRONG—FILED JUNE 22, 1962

R. WRIGHT ARMSTRONG, the witness hereinbefore named, being first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

Direct examination.

By Mr. Hooper:

Q. Would you state your name, please, sir.

A. R. Wright Armstrong.

Q. Where do you reside?

A. 5803 El Campo. I guess it's Terrace. It used to be.

Q. Is that in the City of Fort Worth, Texas?

A. In Fort Worth, Tarrant County.

Q. How are you employed?

A. By the Fort Worth & Denver Railroad Company.

Q. In what capacity?

A. Vice-president.

Q. How long have you held that title with the company?

A. Oh, since March '48.

Q. Are you paid on a salary basis?

A. Uh-huh.

Q. Is your son, R. Wright Armstrong, Jr., living with you at the present time?

A. Yes.

Q. How long has that been true?

A. Well, he has been living with me ever since he got a [fol. 237] divorce from his wife. I believe that was November 6. I believe that's right.

Q. Of '59?

A. Yes. I think—let me see if I have got a note here to tell me.

Don't put this in your record, but old men, I couldn't even tell you how old he was. Yes, I think that divorce was November 6, 1959, that's right.

Q. All right, sir. Now, of the—

A. By the way, let me correct that, counsel, I meant he, he lived with us, oh, for at least three or four months prior to this divorce. He lived with us ever since his wife left him.

Q. All right.

A. If you don't mind that addition.

Q. All right, sir. Now, has he contributed anything to you by way of payment to help defray the costs of his living with you during that period of time?

A. Not a sou.

Q. Has he been furnished his food there living there?

A. When he—when it was convenient I meant for him to do it, yes, I'd say yes. What I mean to say is sometimes he has his lunch downtown.

Q. Have you made any contributions, other than letting him live with you, to his support and maintenance during that period of time?

[fol. 238] A. Oh, yes. Yes, sure.

Q. Could you tell us what those contributions have been?

A. Yes, I can tell you generally. I don't have the figures.

Q. I understand.

A. You'll just have to take it as a general situation.

Q. Yes, sir.

A. Well, let's start out with I bought his divorce for him. We bought him several suits of clothes. We bought him shoes. We bought him underclothes. I bought him haircuts and shaves, shoe shines, handkerchiefs. I even bought him picture shows and took him to the football game.

Q. Have you paid any obligations of his around town?

A. Oh, one note at the bank, at the Fort Worth National, I paid the remaining on that.

Q. Do you know how much that was, sir?

A. No, but it was something over $1,500.

Q. Do you know of any other contributions than what you mentioned?

A. Yes, I paid his bills like doctor bills and drug bills, and when he—I sent him over here to a clinic in Dallas, paid all of that. His mother took him over to the doctor in Dallas, you know, in addition to that.

Q. Have there been any others, or is that all that you can think of at the present time?

[fol. 239] A. Oh, I expect I could make a pretty good itemized statement if I, you know, if I got my checkbook out, but that's been going on for years, counsel, I mean that isn't just this month, you know.

Q. I understand. Has he been self supporting at all since he has been living with you?

A. Oh, no. No.

Q. Mr. Armstrong, do you drink yourself?

A. You bet.

Q. You didn't mention that you had furnished his liquor. Have you furnished any liquor for him in the past during that period that we are thinking of?

A. Not that I know of, and I am pretty sure we haven't.

Q. Well, I'll ask you, did he drink any liquor in the home there that you had purchased?

A. Oh, no. Let me make this, too. I feel in my heart and honest that he hasn't had a drink of liquor since he first went to this Dallas doctor. Now, I can't give you the date of that, but it's some two or more years ago.

That Dallas doctor closed the door; the best money we ever spent.

Q. That, I believe the evidence shows, was somewhere in 1960, about this time of the year, somewhere along there.

A. I don't—I could tell you if I had my checks, but I don't think he has had a drop since that time.

[fol. 240] Q. All right. Prior to that time he did drink some, did he not?

A. He sure did.

Q. Did he buy his own liquor or did you is actually what I am trying to get to, or was it a case of both?

A. I can't, counsel, I mean I can't just tell you that. I suppose you know something about my work. I am only here about 40 percent of the time.

Q. Yes, sir.

A. And he could have had some of my liquor before and I am sure from the bills that I paid that he had some from somewhere else.

Q. Then did you receive liquor bills that you paid for him?

A. I don't think I individually paid over maybe one or two bills that were after him; they weren't too big.

Q. This proceeding, as you I am sure are aware and understand,, is a suit concerning the adoption of your son's daughter Molly Page, your granddaughter, by a Colonel Manzo and the natural mother of the child in El Paso. The allegations in the petition for adoption, as I understand them, were that your son had in effect abandoned the child by not supporting her.

Do you know of any payments made by your son to the support of the child after the divorce?

A. No, that's right, I wouldn't. I don't know.

[fol. 241] Q. Did you yourself ever make any payments towards the support of the child?

A. You mean in cash?

Q. Well, in any way, contributions of any kind.

A. Oh, we have made lots of contributions to the child when the child has been here. I never considered it as a contribution.

Q. Yes. Well, of course, that's when she was living with you?

A. Yes, that's right. We bought her clothes and we, of course, bought toys and everything else, but I mean I never considered it a particular contribution, but we did.

Q. Yes. Well, of course, during the period when she is making a visit in your home it would be expected that you would expend certain sums of money on her, you would feed her and clothe her, and so on.

A. Sure.

Q. But what I am primarily concerned with and had in mind when I asked the question was whether or not you have made any contributions of any sort to the child when she was living with her mother.

A. Oh, no. No, no. If you wouldn't mind, counsel, me adding there, the child isn't mine.

Q. Yes, I understand.

A. You understand, it isn't my child.

[fol. 242] Q. Certainly so.

A. And I didn't get a divorce.

Q. I understand that. Do you have any objection to the adoption by Colonel Manzo and the natural mother of the child?

A. I am the grandfather.

Q. I understand that you are the grandfather. Do you object to the adoption?

A. Could I throw that around with you?

Q. Yes, sir.

A. My feeling on this adoption, things like that is that that comes under the head of my children's business. I am only a member of the board here. I am not the president. I don't operate the company. Of course, I might have my opinions of it.

Q. Is it objectionable to you personally?

A. I would certainly not like to see my granddaughter that I love very dearly lose the name of Armstrong, but—

Q. If she marries somewhere down the line she is going to lose it anyway, isn't she?

A. Well, I am still a member of the board of directors. I am not the president of the concern.

Q. I understand, sir. Has the child visited with you in your home since the divorce was granted?

A. Yes, very fine visits, I guess three, maybe four.

My wife has gone out to get her and brings her back and we have had some very wonderful visits.

[fol. 243] Q. Is your wife very attached to the child?

A. Well, she's a grandma.

Q. Yes, sir. Is there a very close feeling on her part for the child?

A. Oh, I think it's the most—I never saw a child love a grandma like that kid does this grandma.

Q. I assume the feelings are reciprocal?

A. Well, it's got to be.

Q. Or it wouldn't be there in the first place.

A. That's right. It's almost so, so luring, I mean it gets your emotions up to see these two females together.

Q. In the course of events the child will be admitted to school, to the public schools or other schools there in El Paso or wherever her mother may be living.

A. That's right.

Q. And the name Armstrong will then be used by her as her name and will cause some question, I would think, by her classmates or others which should in the natural chain of events be the occasion for some embarrassment to the child, which I personally feel would be removed by her taking the name of the people she's living with, Mr. and Mrs. Manzo.

Would you prefer that this not occur?

A. That's your testimony, counsel.

Q. No, that's just my statement.

A. That's your testimony.

[fol. 244] Q. Would you prefer that this not occur?

A. I have told you I didn't want to see the child lose her name if I could help it.

Q. All right, sir. Do you have other grandchildren?

A. Oh, yes, we have—you see, I have two other children, and we have one grandchild from one and another one by the other one and another one en route, ought to be here about July 4th.

Q. Are any of the other grandchildren grandsons?

A. One, yes—two, yes, two. This is the only girl so far. That's right.

Q. Have you and your wife ever been denied visitation rights with this child?

A. Oh, no—well, we haven't had the child just when my son and they wanted it, but generally speaking we have gotten together and have gotten the child for, oh, some twenty odd days in the summer and I think eight or ten in the winter.

Might I add that we did think that, of course, being old folks, you understand, that we would like to have the child much more.

Q. I understand, of course, you would like to have the child all the time if you could, that's a natural feeling that anyone would have.

A. That's right.

Q. But that's not practicable or possible under the circumstances.

[fol. 245] Mr. Hooper: I believe that's all.

Mr. Boling: I just have a couple of questions, Mr. Armstrong.

Mark this letter and envelope.

(The instruments referred to were here marked Respondent's Exhibits Nos. 1 and 2 for identification, and same are attached hereto.)

Cross examination.

By Mr. Boling:

Q. Mr. Armstrong, I have here a letter that's been marked Respondent's Exhibit No. 2 for identification and ask you if you can identify that letter.

A. Well, that's a letter from I guess, Mrs. Manzo, yes.

Q. A letter from her. Do you know her signature, her handwriting?

A. Oh, yes.

Q. Is that her signature and handwriting?

A. Yes, that's right.

Q. Do you recall that letter specifically having been received?

A. Yes, I guess I did see this letter, but I had forgotten it.

Q. Now, I hand you here what's been marked as Respondent's Exhibit No. 1, for identification, which is an envelope. Is that the envelope that that letter came in?

[fol. 246] A. Yes, that's right, that would be right.

Q. And that was a letter addressed to your wife, I believe, wasn't it?

A. Uh-huh.

Q. Do you know whether or not that was received by your wife?

A, Yes, that would be the only way I would get it because she never would let me open her mail, I'll tell you that.

Q. I see. Now, as I notice the date on the envelope is April 14, 1962.

A. She says Saturday. I don't know what that means.

Q. Now, also, Mr. Armstrong, have you ever received a letter from Colonel Manzo subsequent to this adoption having taken place?

A. I don't know if subsequent. Let me see. I have a letter here from him somewhere, yes.

Mr. Boling: Mark that.

(The instrument referred to was here marked Respondent's Exhibit No. 3 for identification, and same is attached hereto.)

By Mr. Boling:

Q. We have marked this letter Respondent's Exhibit No. 3, for identification. Can you identify that document for us?

A. Yes. This is a letter from Colonel Manzo to me and in which he told me that he has adopted the girl.

[fol. 247] Q. I see. Now, Mr. Armstrong, the reason that I have had these three documents marked, is that letter marked Respondent's Exhibit 3, is that the first notification that you ever had that there were any adoption proceedings pending or that there was an adoption?

A. Yes, sir.

Q. I see.

Mr. Boling: We offer into evidence those three documents and ask that they be attached to the deposition.

Mr. Hooper: The instruments, of course, will be subject to the same agreement that we have as to testimony, that is, that objections may be made to the document, if counsel in El Paso wishes, at the time they are offered in evidence at the trial.

Mr. Boling: That's right. We just ask that they be attached to the deposition.

Mr. Hooper: If you wish, I will certainly be happy to agree with you to substitute photostats so you can retain the originals.

Mr. Boling: That will be fine. We appreciate that.

Mr. Hooper: It is so stipulated.

By Mr. Boling:

Q. As I understand it, Mr. Armstrong, the first notice you ever had that an adoption was contemplated or that an adoption had been even thought of was in the letter by Colonel Manzo which is marked Respondent's Exhibit No. [fol. 248] 3, for identification, here?

A. That's right.

Mr. Boling: We have nothing further.

Mr. Hooper: Mark this.

(The instrument referred to was here marked Petitioners' Exhibit No. 1, for identification, and same is attached hereto.)

Redirect examination.

By Mr. Hooper:

Q. Mr. Armstrong, I will hand you a document which has marked as Petitioners' Exhibit No. 1 and ask you to examine it and tell us if you can identify it.

A. Yes, sir; that's the letter from R. Wright Armstrong to Colonel Manzo.

Q. This was your reply to the letter which has been marked Respondent's Exhibit No. 3, is that correct?

A. Let me see that date, will you, to be sure.

7

Q. All right, sir.
A. 27th; May 8th, yes.

Mr. Hooper: I believe that's all.
Mr. Boling: Nothing else.

(Signature waived.)

[fol. 249] State of Texas
County of Tarrant

I, Wayne E. Silverman, a Notary Public in and for Tarrant County, Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the foregoing answers in response to the interrogatories as indicated were made before me by R. Wright Armstrong, Jr., and R. Wright Armstrong, the witnesses hereinbefore named, after said witnesses had been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and were thereafter reduced to typewriting by me and under my supervision; and the above and foregoing depositions as set forth in typewriting are a full, true, correct and complete transcript of the proceedings had at the time of taking said depositions.

I further certify the signatures of the witnesses to their depositions were waived by all parties present at the taking of said depositions.

Given under my hand and seal of office on this the 19th day of June, A.D., 1962.

Wayne E. Silverman, Notary Public in and for Tarrant County, Texas.

My Commission expires June 1, 1963. Fees $64.85 due from Petitioner.

[fol. 250] Clerk's Note:

Respondent's Exhibits Nos. 1 & 2 are omitted from the record here. Please see folio 12, printed page 23.

[fol. 253] Clerk's Note:

Respondent's Exhibit No. 3 is omitted from the record here. Please see folio 41, printed page 43.

[fol. 254] CLERK'S NOTE:

PETITIONER'S EXHIBIT No. 1 is omitted from the record here. Please see folio 49, printed page 49.

[fol. 256]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of

MOLLY PAGE ARMSTRONG, A Minor.

JUDGMENT OVERRULING MOTION FOR NEW TRIAL —June 29, 1962

Be It Remembered, that on the 22nd day of June, 1962, came on to be heard, in the above styled and numbered cause, the amended motion for new trial and the motion of R. Wright Armstrong, Jr., the natural father of the minor child, Molly Page Armstrong, to set aside the adoption decree entered herein granting leave to Salvatore E. Manzo, joined in his petition by his wife, Alice Davis Manzo, to adopt said minor child, and came the parties in person and by and through their attorneys, and the Court, after considering the pleadings and the evidence, is of the opinion that the said motion of R. Wright Armstrong, Jr., should be in all things overruled and denied.

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the amended motion for new trial and the motion of R. Wright Armstrong, Jr., to set aside the adoption decree entered herein granting leave to Salvatore E. Manzo to adopt said minor child, be and the same is hereby in all things overruled and denied, and that said adoption decree entered herein is in all things confirmed. Counts assessed on motion for new trial against R. Wright Armstrong, Jr. for which execution may issue.

To all of which, in open Court, the said R. Wright Armstrong, Jr. then and there excepted and gave notice of appeal to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso, Texas.

Rendered and Entered in open Court, on the 29th day of June, 1962.

Hans E. Brockmoller, Judge.

Approved as to Form:

W. O. Craft, Attorney for Salvatore E. and Alice Davis Manzo.

W. Barton Boling, Attorney for R. Wright.

[fol. 257] [File endorsement omitted]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of

MOLLY PAGE ARMSTRONG, A Minor.

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW —Filed July 10, 1962

To the Honorable Hans Brockmoller, Judge of Said Court:

Now Comes, R. Wright Armstrong, Jr., Respondent in the above entitled and numbered cause and requests the Judge of said Court who tried such cause, to state in writing the findings of fact found by him separately from the conclusions of law, and to file such findings of fact and conclusions of law with the clerk, so that they shall constitute a part of the record.

Joe A. Morgan, By W. Barton Boling, Attorney for Respondent.

[fol. 258]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, A Minor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW —Filed July 16, 1962

In response to the request of the Respondent, R. Wright Armstrong, Jr., of July 10, 1962, in the above entitled and numbered cause, I make and file the following, as my findings of fact and conclusions of law therein.

Findings of Fact

1.

On March 12, 1962, Salvatore E. Manzo, joined by his wife, Alice Davis Manzo, residents of El Paso County, Texas, as petitioner, filed their petition for leave to adopt Molly Page Armstrong, a female minor, born June 24, 1957, in Fort Worth, Tarrant County, Texas. Said minor being a resident of El Paso County, Texas.

2.

The minor, ~~Molly~~ Page Armstrong, is the natural daughter of Alice Davis Manzo, one of the petitioners, and of the respondent, R. Wright Armstrong, Jr., of Tarrant County, Texas.

3.

That on March 12, 1962, the Clerk of the District Court of El Paso County, Texas, mailed a certified copy of the petition to the Executive Director of the State Department of Public Welfare at Austin, Texas, and noted the same upon the docket of this court.

4.

The petition sets forth the statutory requirements of Article 46a of the Revised Civil Statutes of Texas, as follows:

a. Petitioner Salvatore E. Manzo is forty-four years of age and his wife, Alice Davis Manzo, is thirty-three years of age.

b. Petitioner resided, at the time of the filing of the petition, in El Paso County, Texas, at 7401 Arnold Drive.

[fol. 259]
c. The name to be given the child, through adoption, as set forth in the petition, is Molly Page Manzo.

d. The minor, Molly Page Armstrong is female, of the white race, born June 24, 1957, in Fort Worth, Tarrant County, Texas.

e. The minor, Molly Page Armstrong, was placed in the home of the petitioner, Salvatore E. Manzo, since his marriage to Alice Davis Manzo, on March 11, 1960.

f. Alice Davis Manzo, the natural mother of the child gave her written consent to the adoption by joining in with the petitioner, Salvatore E. Manzo, and also by giving her written consent specifically in said petition. The natural father, R. Wright Armstrong, Jr's, consent in writing was not obtained and the petition alleges that the same was not necessary as R. Wright Armstrong, Jr., had not contributed to the support of the minor, Molly Page Armstrong, commensurate with his ability to do so, for a period in excess of two years, and that the written consent of a Judge of the Juvenile Court of El Paso County, Texas, to-wit, Judge D. E. Mulcahy, Judge of the 41st District Court, consented in writing to said adoption under the provisions of Section 6 of Article 46a of the Revised Civil Statutes of Texas.

g. That the petitioner Salvatore E. Manzo bears no blood relationship to said child, but the petitioner Alice Davis Manzo, is the natural mother of said child.

h. No waiver of the six months residence in the home of the petitioner was requested in said petition.

5.

That on March 12, 1962, the petition being brought to the attention of the court, the court appointed Grace O'Brennan, a suitable person to cause an investigation to be made of the former environment and antecedents of child, for the purpose of ascertaining whether the child was a proper subject for adoption, and of the home of the petitioner, to determine whether it was a suitable home for said child, and ordered that the results of such investigation be filed within forty days from March 12, 1962, and on said date also set the case for hearing before the court for the 27th day of April, 1962, at 9 A. M., which was a time not less than forty days after the mailing by the clerk of the certified copy of the petition to the Executive Director of the State Department of Public Welfare, and a time not exceeding sixty days after such mailing.

6.

The court did not request, nor does the report of the investigator show that the investigator requested any of the information set forth in Section 1c of Article 46a.

[fol. 260]

7.

That March 12, 1962, the natural mother of said minor, Alice Davis Manzo, filed an affidavit in this cause stating under oath that the father of the minor, Molly Page Armstrong, R. Wright Armstrong, Jr., had failed to contribute to the support of said minor child for a period in excess of two years preceding that date, and on said date, the same was presented to the Honorable D. E. Mulcahy, a Judge of the Juvenile Court of El Paso County, Texas, and Judge of the 41st District Court, having had the same before him, found that he had failed to contribute to the support of said minor child during a period in excess of two years, and gave his consent to the adoption in writing, in compliance with Section 6 of Article 46a of the Revised Civil Statutes of Texas.

8.

That on March 21, 1962, Grace O'Brennan, the investigator appointed by the court, filed a written report of her investigation in said cause, relating to the former environments and antecedents of the child, and of the home of the petitioner, recommending the adoption.

9.

That on April 27, 1962, the matter came on to be heard before the court, and the court having heard evidence from the petitioner, Salvatore E. Manzo and Alice Davis Manzo and said child, Molly Page Armstrong being present, talked to said child, and after due consideration of the petition, the investigator's report, and the evidence, held that such minor was a proper subject for adoption, and that the home of the petitioner was a suitable home for said child, and that it would be for the best interest of said child, that her name be changed to Molly Page Manzo, and granted said petition for leave to adopt the minor child, by the said Salvatore E. Manzo, and changing the minor's name, to Molly Page Manzo.

10.

That thereafter, on May 7, 1962, respondent, R. Wright Armstrong, Jr., the natural father of the minor, Molly Page Manzo, filed a motion for new trial in this cause, said respondent not having had notice of the hearing of the adoption proceedings until after the entry of said judgment of April 27, 1962. That thereafter said motion was amended as an amended motion for new trial and motion to vacate said judgment, and filed on May 25, 1962. That thereafter, on June 22, 1962, said amended motion came on to be heard, and same was overruled and denied by the court and order on same was rendered and entered on June 29, 1962.

[fol. 261]

11.

Evidence was heard upon the motion for new trial, and the court found:

That Alice Davis Manzo secured a divorce from R. Wright Armstrong, Jr. on November 6, 1959, in cause No. 16544F in the 96th District Court of Tarrant County, Texas, wherein the custody of Molly Page Armstrong was granted to the plaintiff, Alice Davis Manzo, referred to in said divorce decree as, F. D. Armstrong, with R. Wright Armstrong, Jr. to have the privilege of visiting said child at reasonable places, times and intervals. That the defendant, R. Wright Armstrong, Jr., in said divorce decree, was ordered to pay to Walter Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of $50.00 per month, beginning November 19, 1959, and continuing thereafter on the 16th day of each succeeding month until the further order of the court, or until the child shall reach eighteen years of age.

That after said divorce decree, the said R. Wright Armstrong, Jr. paid the sum of $50.00 during the month of November 1959, and during 1960, paid the sum of $150.00 during February of said year, and made no other payments.

That the said R. Wright Armstrong did not give his written consent to the adoption of the minor, Molly Page Armstrong, Jr., by the said petitioner, Salvatore E. Manzo.

That the said R. Wright Armstrong, Jr., while ill for a time after the entry of the divorce decree of November 6, 1959, was able to work shortly thereafter. That the said R. Wright Armstrong, Jr. was a duly licensed and practicing attorney in the courts of the State of Texas, particularly in Tarrant County, and he was able to do appellate work for another attorney with whom he officed. Further, that he was physically able to teach church school for three years, and sing in the choir during said three year period immediately preceding the hearing on the motion for new trial. That while he did not make any considerable money during said period, he did not contribute to the support of said minor child in compliance with the order of the District Court of Tarrant County, and that during the second week of February, 1962, he was employed, and has been employed, as Corporation Court Judge of the City of Fort Worth full time, although previously he had acted as substitute Judge during 1961, during the absence and illness of other judges of said Corporation Court; and indicated he had filed an income tax return for the year, and paid a taxable income on approximately an income of $900.00. During the year 1960 he was also employed for a short period of time as a corporation prosecutor by the City of Fort Worth. That his salary since February of 1962, as Judge of the Corporation Court of Tarrant County, is slightly in excess of five hundred dollars per month.

[fol. 262] That during the period since the divorce he has paid off approximately four thousand dollars worth of indebtedness which he owed. That he had no living expenses as he was living with his mother and father who paid his medical bills, hospital bills, food and even purchased clothing for him. That upon becoming Judge of the Corporation Court he purchased clothing from several haberdashers, and a new air conditioned Pontiac Catalina on time payments.

Conclusions of Law

1.

That all requirements as set forth in Article 46a have been met by the petitioner Salvatore E. Manzo and wife, Alice Davis Manzo, for the adoption. That the respondent, R. Wright Armstrong, Jr. did not contribute substantially to the support of said minor child, Molly Page Manzo, during such period of two years, commensurate with his financial ability, and it was not necessary to obtain a written consent to the adoption, and the written consent of the Honorable D. E. Mulcahy, Judge of the Juvenile Court of El Paso County, Texas, the Judge of the 41st District Court in the County of the child's residence was obtained in writing, and filed in said proceedings.

2.

That all requirements and conditions of Article 46a having been met, the court concludes that it is the best interest of the minor child, Molly Page Armstrong, to be adopted by the petitioner, Salvatore E. Manzo, and her name changed to Molly Page Manzo.

Hans E. Brockmoller, Judge.

[fol. 263] [File endorsement omitted]

In the District Court of El Paso County, Texas

120th Judicial District

No. 102,485

In the Matter of the Adoption of

Molly Page Armstrong, A Minor.

Objection to the Court's Findings of Facts and Conclusions of Law and Respondent's Request for Additional and Amended Findings of Facts and Conclusions of Law—Filed July 16, 1962

Comes Now, R. Wright Armstrong, Jr., Respondent in the above cause and hereby objects and excepts to the court's findings of facts and conclusions of law submitted by the court to the undersigned attorney on the 12th day of July, 1962, and would show as follows:

I.

That Respondent does not object to paragraphs 1 through 6 and paragraphs 8 and 9 of the court's findings of facts. That Respondent does object and except to paragraph 7 of the court's findings of facts wherein the court in its final remark states the conclusion "in compliance with Section 6 of Article 46a of the Revised Civil Statutes of Texas", because the same is a conclusion of law and not fact and for the reason it is an incorrect statement of the law under the evidence and asks that that portion of paragraph 7 be stricken from the court's findings of facts.

II.

That Respondent objects and excepts to the findings of facts of the court as contained in paragraphs 10 and 11 for the reason that they are incomplete, misleading and do not adequately represent the controlling facts as established by the evidence and for that reason asks that paragraphs 10 and 11 of the court's findings of facts be stricken and the requested findings of fact attached hereto be found as facts by the court instead, or alternatively the attached findings be found by the court as additional findings of fact.

III.

That Respondent objects and excepts to all of the court's conclusions of law and ask that they be stricken for the reason they are incorrect conclusions under the evidence and that they are insufficient conclusions under the evidence.

[fol. 264] Wherefore, Premises Considered, Respondent requests that the conclusions of law as found by the court be stricken and the requested conclusions of law requested by Respondent be found by the court, and that the requested findings of facts of Respondent be found by the court in lieu of paragraph 10 and 11 of the court findings of facts, and that paragraph 7 of the court's findings of facts be amended as requested.

Respectfully Submitted

Morgan and Boling, By W. Barton Boling, Attorney for Respondent.

[fol. 265]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, A Minor.

REQUESTED FINDINGS OF FACTS AND CONCLUSIONS OF LAW —Filed July 16, 1962

Respondent in the above cause requests the court to find the following findings of fact and conclusions of law.

1. That the address and whereabouts of the said R. Wright Armstrong, Jr. were at all times well known to the Petitioners during the period from March 12, 1960, through May, 1962.

2. That after the Petitioners married on March 11, 1960, neither Mrs. Alice Davis Manzo nor Mr. Salvatore E. Manzo ever made any request or demand of R. Wright Armstrong, Jr. that he pay any child support or that he contribute to the support of Molly Page Armstrong.

3. That at no time after her divorce from R. Wright Armstrong, Jr. did Mrs. Alice Davis Manzo ever communicate with or personally request or demand of R. Wright Armstrong, Jr. that he pay any child support or that he contribute to the support of Molly Page Armstrong.

4. That the reason that Mrs. Alice Davis Manzo and Salvatore E. Manzo did not, after their marriage, make any efforts or make any requests or demands of R. Wright Armstrong, Jr. to pay the child support or to contribute to the support of Molly Page Armstrong was in part their desire that the adoption go through without the necessity of obtaining the written consent of R. Wright Armstrong, Jr. to the adoption.

5. That the income and financial ability of Alice Davis Manzo and Salvatore E. Manzo was, at all times during their marriage, sufficient to provide necessary support to Molly Page Armstrong, and that during that period any support payments directed to them would have been put in an account for Molly Page Armstrong's education.

6. That neither Alice Davis Manzo nor Salvatore E. Manzo ever investigated the financial ability of R. Wright Armstrong, Jr. nor did they ever investigate or know what the income of R. Wright Armstrong, Jr. was.

7. That on or about one month after the divorce of Alice Davis Manzo from R. Wright Armstrong, Jr. on November 6, 1959, the said R. Wright Armstrong, Jr., because he was so emotionally disturbed and could not continue to fulfill his duties, was asked to resign and was taken off the payroll of the Trinity Cement Company where he had been employed for several years.

8. That on or about December 22, 1959, the said R. Wright Armstrong, Jr. received emergency hospitalization after having had a convulsion described as a grand mal seizure and that his hospitalization continued for approximately two or three weeks when he was released to return to his parents home for convalescence.

[fol. 266] 9. That upon his hospitalization, R. Wright Armstrong, Jr. went under the care of Dr. Gordon B. Kelly and that following numerous tests and observations by other doctors, it was concluded that the primary cause of the hospitalization was emotional disturbance symbolized by heavy drinking and Mr. Armstrong was referred to Dr. Holmgren, a psychiatrist, for treatment.

10. That R. Wright Armstrong, Jr.'s emotional disturbance was as incapacitating as organic diseases and that R. Wright Armstrong, Jr.'s emotional condition made him unable to carry on in his normal fashion and that generally his condition would make him hazy and not too well adjusted and unable to hold down gainful employment for a period of at least six months and probably for a period of one year after his hospitalization, because it would be a difficult transitional period.

11. That subsequent to his release from the hospital, R. Wright Armstrong, Jr. obtained employment with the City of Fort Worth as an assistant city attorney assigned to prosecute traffic cases in the corporation courts. That from the time he was asked to resign from the Trinity Cement Company until he obtained his employment with the City of Fort Worth in February, 1960, R. Wright Armstrong, Jr. was unemployed and was receiving no income.

12. That R. Wright Armstrong, Jr. remained in the employ of the City of Fort Worth approximately three to four months and his take home pay was approximately $150.00 to $160.00 every two weeks. That R. Wright Armstrong, Jr. was unable to concentrate long enough to try the traffic cases or remember enough facts to carry on his duties and that the City Attorney of Fort Worth called R. Wright Armstrong, Jr. in and asked R. Wright Armstrong, Jr. to resign and to straighten out his emotional problem.

13. That from the income received from his employment as assistant city attorney of Fort Worth during that three to four month period, R. Wright Armstrong, Jr. paid out of that the sums of $150.00 to the child support office in Fort Worth, Texas, for Molly Page Armstrong, $232.00 for back house payments and $78.00 for insurance necessary to close out the sale of the house owned by R. Wright Armstrong, Jr. and Alice Davis Manzo. That the balance of income received as assistant city attorney was used by R. Wright Armstrong, Jr. to pay on the community debts of R. Wright Armstrong, Jr. and Alice Davis Manzo incurred by them prior to their divorce.

14. That following his loss of his job as assistant city attorney, R. Wright Armstrong, Jr. was unemployed and went under the care of Dr. Arch McNeill of Dallas. That Dr. McNeill advised R. Wright Armstrong, Jr. to go to work in a field enjoyed whereby he could regain his strength, both physically and mentally, through the therapy of engaging in activities he enjoyed. Particularly Dr. McNeill urged R. Wright Armstrong, Jr. to go back to the practice of law. That R. Wright Armstrong, Jr. was under the care of Dr. McNeill from the summer of 1960 for about seven or eight months.

15. Pursuant to the suggestion and advice of Dr. McNeill, R. Wright Armstrong, Jr. entered an arrangement with Elmo Irby, attorney in Fort Worth, to come into his office on a non-salary basis to start his own law practice. R. Wright Armstrong, Jr. has use of the office and facilities of Mr. Irby without charge in exchange for R. Wright Armstrong, Jr. assisting Mr. Irby in running errands, getting judgments signed, briefing and similar matters. That this arrangement continued from about July 15, 1960, until about February, 1962.

[fol. 267] 16. That during the period of about July 15, 1960, until the end of 1960, R. Wright Armstrong, Jr. made no money from his own practice but did receive the following amounts from Mr. Irby for work done for him: December 12, 1960—$37.50; December 28, 1960—$47.42; December 31, 1960—$75.00. That those sums were the only income received by R. Wright Armstrong, Jr. during the period July 15, 1960 to the end of 1960.

17. That during the first part of the period R. Wright Armstrong, Jr. was with Mr. Irby during 1960, his emotional condition was such that he was unable to carry on regular office hours and his mental state was fuzzy and had difficulty grasping what was going on. That on several occasions R. Wright Armstrong, Jr. while performing errands for Mr. Irby would return having forgotten to accomplish the errand, but that R. Wright Armstrong, Jr. became more interested in the practice of the law and his mental condition began to improve as the months went on.

18. That during the year 1961, while still with Mr. Irby under the same office arrangement, Mr. Irby paid to R. Wright Armstrong, Jr. the following sums: June 27, 1961—$142.10; July 1961—$75.00. That in addition to those sums, R. Wright Armstrong, Jr. received during the year 1961 from his own private practice approximately the sum of $200.00 which was received in sporadic periods throughout the year and being comprised primarily of fees involving $10.00 to $15.00. That during the latter part of 1961 and the beginning of 1962, R. Wright Armstrong, Jr. did act from time to time as substitute corporation judge at

various intervals and was paid on a basis of $40.00 per day for which he received from such substitute services approximately the total sum of $60.00. That out of such incomes he paid about $75.00 for clothing for Molly Page Armstrong which he gave her while she was visiting in the summer of 1961, and during Molly Page Armstrong's visit to Fort Worth over the Christmas holidays he purchased her about $50.00 in clothing and gave to her. That the bulk of the balance of such income was used by R. Wright Armstrong, Jr. to pay on the community debts incurred by R. Wright Armstrong, Jr. and Alice Davis Manzo prior to their divorce.

19. That in about November, 1961, the City Attorney of Fort Worth asked R. Wright Armstrong, Jr. to keep himself available because one of the corporation court judges was to retire and he wanted R. Wright Armstrong, Jr. to seek the position. Subsequently, after a unanimous recommendation by the Bar Association in Tarrant County, Texas, the Fort Worth City Counsel appointed R. Wright Armstrong, Jr. as corporation court Judge, a position he began about the second week in February, 1962, and a position he now holds.

20. That as corporation court Judge, R. Wright Armstrong, Jr. earns $239.44 every two weeks take home pay. That at the time of taking that position, R. Wright Armstrong, Jr. still owed approximately $400.00 or $500.00 to the Union Bank in Fort Worth representing the balance due on a community note and debt incurred by R. Wright Armstrong, Jr. and Alice Davis Manzo prior to their divorce. That as one of the conditions of being given the position of corporation court Judge was that he would clear up all debts so the city would not be embarrassed by any long overdue obligations and that his first money from that position would be used to clear up all such debts. That R. Wright Armstrong, Jr. did upon receiving his first two checks as corporation court Judge pay off the balance due on the said note at the Union Bank of Fort Worth in the approximate amount of $400.00 to $500.00.

[fol. 268] 21. That R. Wright Armstrong, Jr., subsequent to his divorce from Alice Davis Manzo, incurred no debts of his own.

22. That out of his next money as Judge, after payment of the balance of said bank note, R. Wright Armstrong, Jr. purchased himself articles of clothing necessary to his position as a Judge of a Corporation Court.

23. That the divorce decree between R. Wright Armstrong, Jr. and Alice Davis Manzo contained no order concerning the approximately $4,000.00 in community debts incurred by R. Wright Armstrong, Jr. and Alice Davis Manzo during their marriage. That the balance on one community note and debt at the Fort Worth National Bank in the amount of about $1,500.00 was paid by R. Wright Armstrong Jr.'s father who was a co-signer of the note, after R. Wright Armstrong, Jr. and Alice Davis Manzo were divorced.

24. That although R. Wright Armstrong, Jr. and Alice Davis Manzo owned community real property and community personal property at the time of their divorce, the court in the divorce decree made no specific disposition of such community property other than to state "That the community and separate property of the parties be distributed by agreement of the parties". That the court in its decree made no mention of any specific property settlement agreement nor did the court in its decree approve any such property settlement agreement. That the property settlement agreement introduced in this cause as Exhibit P-10 apparently is the original of a property settlement agreement, but it contains no file markings indicating it was ever filed in the divorce papers of the 96th Judicial District which granted such divorce. Nor does it appear that said court ever saw such property settlement agreement.

25. That R. Wright Armstrong, Jr. and Alice Davis Manzo owned a house at 6853 Middle Road, Fort Worth, Texas, at the time of their divorce. That the house was subsequently sold in February, 1960, for approximately $1,000.00 cash. That at the time of the sale, R. Wright Armstrong, Jr. believed that the funds of the sale were to be

split 50-50 between himself and Alice Davis Manzo. That Mr. Elmo Irby who had taken part in the property settlement negotiations recalled that such funds were to be split 50-50. That Fred Cruseman, attorney handling the closing of the house sale thought the funds were to be split 50-50. That upon receipt of the approximately $1,000.00 cash from the sale of the house Fred Cruseman was going to split the funds 50-50 until R. Wright Armstrong, Jr. requested that he be given only about $150.00 of the money and that the balance of his half along with her half be sent to her to help with the child and the amount of approximately $850.00 was sent to Alice Davis Manzo. That R. Wright Armstrong, Jr. requested that the bulk of his one-half be sent to her because he was concerned at that time about his lack of income and intended it as a contribution to the support of Molly Page Armstrong.

26. That the child, Molly Page Armstrong, was allowed to visit in the home of R. Wright Armstrong, Jr.'s parents where he was living for approximately two weeks during the summer of 1960 and 1961, and over the Christmas holidays of 1960, 1961 and 1962.

27. That prior to the child's first visit in the summer of 1960, Alice Davis Manzo wrote to R. W. Armstrong, Sr., advising him that Molly Page Armstrong could start to visit if they would assure her that the child would be picked up and returned and assure her that they would be in Fort Worth during the child's visit as Mrs. Manzo had received unsolicited reports that R. W. Armstrong, Jr. was not quite himself. Those assurances were given by R. W. Armstrong, Sr.

[fol. 269] 28. That during the latter part of 1961, R. Wright Armstrong, Jr. substantially regained his stability and substantially regained his emotional stability. That R. Wright Armstrong, Jr. completely ceased drinking during the first part of the summer of 1960, and at present has fully recovered.

29. That the automobile purchased by R. Wright Armstrong, Jr. was purchased with no down payment and no trade in the latter part of March, 1962, and the first pay-

ment on said automobile was made by R. Wright Armstrong, Jr. in the latter part of May, 1962. That such automobile was the first one ever owned by him.

30. That R. Wright Armstrong, Jr. never consented to the adoption of Molly Page Armstrong, and was never asked to consent to such adoption. That R. Wright Armstrong, Jr. was never notified of the adoption proceedings and had no knowledge of the adoption proceedings until after the entry of the said adoption judgment of April 27, 1962.

31. That on May 7, 1962, R. Wright Armstrong, Jr. filed a motion for new trial in this cause. That thereafter on June 25, 1962, said motion was amended as an amended motion for new trial and motion to vacate said judgment. That said amended motion came on to be heard on June 22, 1962, and same was overruled and denied by the court and an order on same was rendered and entered on June 29, 1962.

32. That throughout the period 1960, 1961, substantial pressure was brought to bear on R. Wright Armstrong, Jr. to pay the community debts that had been incurred by R. Wright Armstrong, Jr. and Alice Davis Manzo prior to their divorce. That such creditors not only constantly called R. Wright Armstrong, Jr. but also constantly called his mother and father and in fact on one occasion threatened to attempt to get R. Wright Armstrong, Jr. disbarred because of such debts.

33. That R. Wright Armstrong, Jr. has always had a great love and affection for Molly Page Armstrong, his only child, and that Molly Page Armstrong has always demonstrated her love and affection to R. Wright Armstrong, Jr., her natural father.

Requested Conclusions of Law.

1. That a finding or determination by the Juvenile Judge that the living natural father has failed to contribute to the support of the minor child sought to be adopted for a period of two years is insufficient under Article 46a to authorize the adoption of the minor child on the written con-

sent of the Juvenile Judge without the written consent of the natural father, unless the Juvenile Judge also specifically finds or determines that the natural father shall have not contributed substantially to the support of such child during such two year period commensurate with his financial ability.

[fol. 270] 2. That even if the Juvenile Judge gives his written consent to the adoption of such minor child, it is still necessary to notify the natural father of the adoption proceedings where the whereabouts of the natural father is known.

3. That under Article 46a the use of the failure of the natural father to substantially contribute to the support of his child, commensurate with his financial ability for a period of two years does not include a failure to support which is done through force of circumstances or necessity but issued in a sense of a willful failure such as would imply a conscious disregard to the child in respect of the parental obligation of support.

4. That after the divorce of R. Wright Armstrong, Jr. and Alice Davis Manzo, their community property, including community real property, was owned jointly by them as tenants in common since the court in its decree of divorce failed to either specifically dispose of such community property or to specifically divide such community property between them.

5. That it was necessary to obtain the written consent of R. Wright Armstrong, Jr. to the adoption unless he shall have not contributed substantially to the support of Molly Page Armstrong during a period of two years commensurate with his financial ability.

6. That under the evidence, R. Wright Armstrong, Jr. did not fail to substantially contribute to the support of Molly Page Armstrong during the two year period commensurate with his financial ability as required by Article 46a before Molly Page Armstrong could be adopted without his written consent.

7. That the right and power of adoption is strictly statutory and unless Article 46a is strictly complied with, no adoption can be permitted.

8. That Petitioners had the burden of proof in this matter.

Respectfully Requested

Morgan and Boling, By W. Barton Boling, Attorney for Respondent.

[File endorsement omitted]

[fol. 271]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of

MOLLY PAGE ARMSTRONG, A Minor.

ORDER OVERRULING OBJECTION TO COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW—July 16, 1962

On this, the 16th day of July, 1962, came on to be considered by the Court the objections and exceptions and requests for additional and amended findings of facts and conclusions of law of R. Wright Armstrong, Jr., Respondent in the above entitled and numbered cause, and the Court having considered the same and being of the opinion that such objections and exceptions and requests should be in all things overruled and denied:

It is hereby Ordered and Decreed by the Court that the objections and exceptions to the Court's findings of facts and conclusions of law, on file in the above cause, be in all things overruled; and it is further Ordered and Decreed by the Court that all of Respondent's requests for additional and amended findings of fact and conclusions of law are hereby in all things denied. To all of which Respondent excepted and gave notice of appeal to the Court of Civil Appeals of El Paso.

Signed and Entered this 16th day of July, 1962.

Hans E. Brockmoller, Judge.

[fol. 272]

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

120TH JUDICIAL DISTRICT

No. 102,485

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, A MINOR.

APPEAL BOND—Filed July 17, 1962

Whereas, in the above entitled and numbered cause pending in the 120th Judicial District Court of El Paso County, Texas, and at a regular term of Court, on the 27th day of April, 1962, the Court entered judgment granting leave to Salvatore E. Manzo and Alice Davis Manzo, Petitioners in the above cause, to adopt Molly Page Armstrong, a minor girl, and changing the name of said child to Molly Page Manzo, and

Whereas, on the 7th day of May, 1962, R. Wright Armstrong, Jr., the natural father of said child, and Respondent in the above cause, filed his motion for new trial in the above cause, and on the 25th day of May, 1962, filed his amended motion for new trial and motion to vacate said judgment in the above cause, and

Whereas, on the 29th day of June, 1962, the Court in the above cause rendered and entered its judgment and order overruling and denying Respondent's amended motion for new trial and motion to vacate judgment, and in said judgment and order the said Court assessed only the costs of the motion for new trial against the Respondent, R. Wright Armstrong, Jr., from which judgments and order the said R. Wright Armstrong, Jr. desires to take an appeal to the Court of Civil Appeals for the Eighth Supreme Judicial District, sitting at El Paso, Texas;

[fol. 273] Now Therefore, Know All Men by These Presents: That we, R. Wright Armstrong, Jr., as Principal and V. G. Apodaca, Jr. and V. G. Apodaca, Sr., as Sureties, acknowledge ourselves bound to pay to the said Salvatore E. Manzo and Alice Davis Manzo, the sum of Three Hundred ($300.00) Dollars, conditioned that the said R. Wright Armstrong, Jr., Appellant, shall prosecute his appeal with effect, and shall pay all costs assessed against him which have accrued in the Court below, and which may accrue in the Court of Civil Appeals and the Supreme Court.

Witness our hands, this the 17th day of July, A. D. 1962.

R. Wright Armstrong, Jr., By: W. Barton Boling, Attorney in Fact, Principal.

V. G. Apodaca Jr., Surety.

V. G. Apodaca Sr., Surety.

I have fixed the probable amount of the costs of suit in the Court of Civil Appeals, the Supreme Court, and the Court below, at $150.00, and approve and file the foregoing Bond, this 17th day of July, A. D. 1962.

John Johnson, Clerk of the District Court of El Paso County, State of Texas.

[fol. 274] Certificate

I, the undersigned, hereby certify that the Tax Collector's records for El Paso County, Texas, reveal that V. G. Apodaca, Jr., a surety on the attached appeal bond, owns the following real property situated in El Paso County, Texas, valued for tax purposes at $5400.00, which is subject to execution, to-wit:

Block 131, Lot 23 & 24, East El Paso addition to the City of El Paso, El Paso County, Texas.

And that V. G. Apodaca, Sr., also a surety on the attached appeal bond, owns the following real property situated in El Paso County, Texas, valued for tax purposes at $18,200.00, which is subject to execution, to-wit:

Block 19, Lots 6 to 8, East El Paso addition to the City of El Paso, El Paso County, Texas.

Leland P. Rowe, Title: Sr. Counter Dep. City Tax Office.

[File endorsement omitted]

[fol. 275] PRAECIPE—Filed July 17, 1962 (omitted in printing).

[fol. 277] STATEMENT OF COSTS—July 31, 1962 (omitted in printing).

[fol. 278] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 279] [File endorsement omitted]

[fol. 280]

IN THE COURT OF CIVIL APPEALS
FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT EL PASO

No. 5618

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, A Minor.

Appeal From the District Court of El Paso County, Texas
One Hundred Twentieth Judicial District

EXCERPTS FROM APPELLANT'S BRIEF —Filed September 14, 1962

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[fol. 281]

Appellant's Points on Appeal Stated

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[fol. 282]

Appellant's Point No. 3

The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on which the adoption is founded, or in any event, Section 6 of Article 46a on which the adoption is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law.

Appellant's Point No. 4

The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the Appellant.

• • • • • • •

[fol. 283] Respectfully Submitted,

Morgan & Boling, By: W. Barton Boling, 601 Bassett Tower, El Paso, Texas, Attorneys for Appellant.

Certificate of service (omitted in printing).

[fol. 284] [File endorsement omitted]

IN THE COURT OF CIVIL APPEALS

FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT EL PASO

No. 5618

[Title omitted]

Appeal From the District Court of El Paso County, Texas
One Hundred Twentieth Judicial District

EXCERPTS FROM MOTION TO ABATE ADOPTION —Filed July 1, 1963

Comes now, R. Wright Armstrong, Jr., Appellant, and presents this, his motion to abate the adoption proceedings involved herein, and without waiving any matters urged by him in his brief on file, moves the Court to estop the [fol. 285] appellees from pursuing the adoption of Molly Page Armstrong, a minor, for the following reasons:

Statement

On November 6, 1959, Alice Davis Manzo, then Alice Davis Armstrong, was divorced from R. Wright Armstrong, Jr., the Appellant, in Tarrant County, Texas. In that divorce, Alice Davis Manzo was awarded custody of their only child, Molly Page Armstrong, and the Appellant was ordered to pay $50.00 per month as child support.

Alice Davis Manzo then married Salvatore E. Manzo on March 11, 1960. On March 12, 1962, Salvatore E. Manzo, joined by his wife Alice Davis Manzo, the Appellees, filed their petition for leave to adopt Molly Page Armstrong, (Tr. 2-5). By judgment dated April 27, 1962, Salvatore E. Manzo was granted leave to adopt Molly Page Armstrong. (Tr. 9-12). The Appellant did not consent to the adoption and was not notified of the adoption proceedings until after entry of said judgment.

Immediately upon learning of the adoption and judgment, Appellant, on May 7, 1962, filed a motion for new trial (Tr. 13, 14) and on May 25, 1962, filed an amended motion for new trial and motion to vacate judgment. (Tr. 15-18). Appellant's motion was heard by the Court, without a jury, on June 22, 1962, which hearing resulted in a judgment dated June 29, 1962, overruling and denying Appellant's motion, and confirming the adoption judgment. (Tr. 20). Appellant gave notice and duly perfected his appeal. The matter is presently pending before this Court.

Following perfecting this appeal and the filing of briefs herein, Mr. Winfred Hooper, Jr., attorney for Alice Davis Manzo, by letter dated November 26, 1962, the original of said letter being attached hereto as exhibit "A" and made [fol. 286] a part hereof, which letter was received by the Appellant, demanded of the Appellant that he pay to Mrs. Manzo all child support arrearage from February, 1960, to the date of said letter. Thereafter the Appellant borrowed $1,550.00, and in compliance with Mrs. Manzo's demand of November 26, 1962, tendered such amount along with a Bill of Interpleader into the 96th District Court of Tarrant County, Texas, the Court granting the divorce and ordering the child support. This was the first demand of Mrs. Manzo for child support from the Appellant since her marriage to Mr. Manzo.

In response, Mrs. Manzo on March 22, 1963, filed her "Motion to Compel Payment of Child Support," a certified copy of which is attached hereto as exhibit "B" and made a part hereof, wherein Mrs. Manzo requested that the $1,550.00 deposited with the Court be paid over to her and that if such were not done that Appellant be found in contempt of Court for failing to do so. On May 3, 1963, Appellant filed his reply to her motion to compel payment of child support, a certified copy of such reply being attached hereto as exhibit "C" and made a part hereof.

Also, on May 3, 1963, Appellant filed his First Amended Bill of Interpleader, a certified copy of which is attached hereto as exhibit "D" and made a part hereof, wherein Appellant requested that the funds on deposit with the Court remain on deposit until upon proper evidence before the Court, the Court could make a proper disposition of the money. On May 14, 1963, Mrs. Manzo filed a "Complaint For Contempt of Non-Payment of Child Support," a certified copy being attached hereto as exhibit "E" and made a part hereof, wherein it was asked that Appellant show cause why he should not be held in contempt for failure to pay the child support ordered by the Court on November 6, 1959; that the $1,550.00 be paid to Mrs. Manzo, [fol. 287] and that Appellant be ordered to pay an additional amount of $583.33 to Mrs. Manzo as her necessary and reasonable attorney's fee. Mrs. Manzo's husband, Salvatore E. Manzo, also signed such contempt complaint as shown on exhibit "E" hereto.

All of the foregoing matters in the 96th District Court of Tarrant County, Texas, are still pending before that Court.

* * * * * * *

[fol. 288] Respectfully Submitted,

Morgan & Boling, W. Barton Boling, 601 Bassett Tower, El Paso, Texas, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 289]

EXHIBIT "A" TO MOTION TO ABATE ADOPTION

[Letterhead of Crumley and Hooper,
Fort Worth 2, Texas]

November 26, 1962

Mr. R. Wright Armstrong, Jr.
Judge, Corporation Court No. 2
921 Monroe Street
Fort Worth, Texas

Re: Molly Page Armstrong
Child Support

Dear Judge Armstrong:

We have been employed by Mrs. S. E. Manzo to collect the child support due under order of the 96th District Court which is in arrears for the period from February, 1960, to the current date, with the exception of the $50.00 payment which you recently made.

Please let us have your remittance of the arrearage, through the Child Support Office of Tarrant County, within ten days after your receipt of this letter.

Very truly yours,

CRUMLEY & HOOPER
/s/ W. HOOPER
Winfred Hooper, Jr.

WH/jp

CERTIFIED-RETURN
RECEIPT REQUESTED

cc: Mr. Don Prager
Mr. Ronald Aultman
Mr. S. E. Manzo

[fol. 290]

Exhibit "B" to Motion to Abate Adoption

In the District Court of Tarrant County, Texas
96th Judicial District
No. 16544-F

F. D. Armstrong
vs.
R. W. Armstrong, Jr.

Motion to Compel Payment of Child Support

To Said Honorable Court:

Now comes Flournoy Manzo, formerly F. D. Armstrong, complaining of R. W. Armstrong, Jr., and respectfully moves the court to enter order compelling payment of child support, and would respectfully show the court as follows:

I

On November 6, 1959, a judgment was entered under the terms of which the said R. W. Armstrong, Jr. was ordered to pay child support of $50 per month. Defendant R. W. Armstrong, Jr. did not pay such child support as ordered by the court, but has wholly failed and refused to do so, with the exception of a small amount paid immediately after the order was entered.

II

This court, in a recent hearing, made a ruling that the parental rights of R. W. Armstrong, Jr. to the child Molly Page Armstrong have not terminated and will not terminate until final judgment of the Court of Civil Appeals sitting in El Paso has rendered final judgment in an adoption contest between the parties. Accordingly, the correlative duty of defendant R. W. Armstrong, Jr. to pay the child support ordered by the court remains in full force and effect, and child support arrearage should be paid, or defendant R. W. Armstrong, Jr. should be held in contempt. R. W. Armstrong, Jr. has deposited in the registry of the court $1550 by cashier's check representing such child support. Plaintiff seeks order of the court that said child support be paid to the Child Support Officer of Tarrant County, Texas, and in turn be forwarded to her, and that all other child support payments now in arrears be ordered paid by defendant R. W. Armstrong, Jr. and if not [fol. 291] paid that he will be held in contempt of this court.

Wherefore premises considered, plaintiff prays that upon hearing hereof, the amount of $1,550 now deposited in the registry of this court be ordered paid to Walter Echols, Child Support Officer of Tarrant County, Texas and in turn transmitted to her, and that defendant R. W. Armstrong, Jr. be ordered to pay any and all other child support payments in arrears, and that upon his failure to do so, he be held in contempt of this court, and that all costs in this behalf expended be assessed against R. W. Armstrong, Jr. and for such other and further relief to which plaintiff may show herself justly entitled, at law or in equity.

Crumley and Hooper

/s/ Winfred Hooper, Jr.
1405 Fair Building
Fort Worth, Texas
Attorneys for Plaintiff

[fol. 292]

EXHIBIT "D" TO MOTION TO ABATE ADOPTION

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

96TH JUDICIAL DISTRICT

No. 16544-F

F. D. ARMSTRONG

vs.

R. W. ARMSTRONG, JR.

FIRST AMENDED BILL OF INTERPLEADER

To the Honorable Judge of Said Court:

Comes now R. W. Armstrong, Jr., Defendant in the above styled and numbered cause, and proponent of this Bill of Interpleader, complaining of F. D. Armstrong (Flournoy Manzo), the Plaintiff in the above styled and numbered cause, who resides at 3012 Titanic Drive, El Paso, Texas, where service upon her may be obtained.

I.

That on the 6th day of November, 1959, a Judgment was entered, whereby the parties hereto were divorced from the bonds of matrimony and the Court in said Judgment order child support to be paid in the amount of $50.00 per month commensurate with the Defendant's ability to pay.

II.

That the Defendant, R. W. Armstrong, Jr., paid as ordered by the Court for a short period and then through illness, was unable to work, therefore, unable to pay as so ordered.

III.

That certain amounts were paid, both in monies and in goods, since said divorce, by the Defendant, and the minor child, Molly Page Armstrong, visited in the home of the Defendant continuously since said divorce.

IV.

That on April 27, 1962, unknown to the Defendant, the husband of the Plaintiff above, Salvatore E. Manzo, adopted the minor child without the consent, notification or service on R. W. Armstrong, Jr., which adoption was predicated upon abandonment, and said adoption being on ap- [fol. 293] peal before the Eighth Supreme Judicial District in El Paso, Texas, No. 5618, whereby R. W. Armstrong, Jr., is appellant. After the entry of the Judgment for adoption, to-wit: April 27, 1962, Salvatore Manzo's attorney has made demand upon R. W. Armstrong, Jr., to-wit: November 26, 1962, or some eight (8) months after the adoption and some seven and one-half (7½) months after the adoption proceeding was appealed, a copy of said demand being attached hereto and made a part hereof for all purposes whatsoever.

V.

The Defendant, R. W. Armstrong, Jr., deposits with the Court, a cashier's check in the amount of $1,550.00 in compliance with the attached demand, said check being identified as Defendant's Exhibit "B" and a copy of the note whereby this amount has been borrowed identified as Defendant's Exhibit "C" and if he does owe for the support of said minor child any monies, the amount thereof is unknown to him, but cannot exceed the attached check.

WHEREFORE, premises considered, the Defendant, R. W. Armstrong, Jr., respectfully requests that the Plaintiff above be served according to law and that the attached monies be placed within the registry of the Court and remain in the registry of the Court, and that upon proper evidence before the Court, the money attached hereto be disbursed to said minor child, or that the monies attached hereto be returned to R. W. Armstrong, Jr., if no such showing is made, and for any other and further relief, to which the Defendant may show himself justly entitled.

BYRON, WRIGHT, BUTCHER & PRAGER

By: /s/ David Prager
818 Continental National Bank Bldg.
Fort Worth 2, Texas

[fol. 294]

MATTHEWS, AULTMAN & RILEY

By: /s/ [Signature Illegible]
412 Sinclair Building
Fort Worth 2, Texas
Attorneys for Dependant,
R. W. Armstrong, Jr.

[fol. 295]

EXHIBIT "E" TO MOTION TO ABATE ADOPTION

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

96TH JUDICIAL DISTRICT

No. 16554-C

F. D. ARMSTRONG

vs.

R. W. ARMSTRONG, JR.

COMPLAINT FOR CONTEMPT OF NON-PAYMENT OF CHILD SUPPORT

To Said Honorable Court:

Now comes Flournoy Manzo, plaintiff (formerly F. D. Armstrong, plaintiff) complaining of R. W. Armstrong, Jr., defendant, who resides in Fort Worth, Tarrant County, Texas, and files this complaint, asking that the said R. W. Armstrong, Jr. be notified to appear and show cause why he should not be held in contempt for failing to obey the order of this court dated November 6, 1959, and would respectfully show the court as follows:

I

On November 6, 1959, a judgment of divorce was entered, divorcing plaintiff and defendant, and ordering the defendant to pay unto Walker Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of fifty dollars ($50.00) per month, beginning November 16, 1959, and continuing thereafter on the 16th day of each succeeding month until further order of this court, for the support of the minor child of the parties, Molly Page Armstrong.

II

Defendant made the following payments only in support of his said child, in obedience to the order of this court:

December, 1959	$ 50.00
February, 1960	150.00
November, 1962	50.00
December, 1962	75.00
January, 1963	25.00

In addition, defendant has filed what he called a "Bill of Interpleader", and has deposited with the registry of the court the sum of one thousand five hundred fifty dollars ($1,550.00), which he refuses to pay to the Child Support Officer of Tarrant County, in obedience to the order of this [fol. 296] court, but made his deposit conditioned on the outcome of other litigation now pending in El Paso County, Texas. The total amount of child support payments due under the order of the court from November 6, 1959 to May 6, 1963 is two thousand one hundred dollars ($2,100.00). The obligation of the defendant R. W. Armstrong, Jr., to support his daughter Molly Page Armstrong is absolute and unconditional. His conduct in failing to obey the order of this court constitutes a contempt of this court, for which action he should be held to account. The deposit of $1,500.00 conditionally tendered to the court by defendant R. W. Armstrong, Jr. should be by the court ordered paid and delivered by the clerk to Walker Echols, Child Support Officer of Tarrant County, Texas, for transmittal to the mother of the child, plaintiff.

III

Pleading further and specially, plaintiff would show that it has been necessary to engage the services of the undersigned attorneys for collection of the child support arrearages due under order of the court, for filing this complaint for contempt, and for preparation and trial of this matter, and that she has agreed to pay said attorneys an attorney's fee of one-third of the amount of child support arrearage collected under order of this court, which is a reasonable fee for their necessary services. Plaintiff would show that the court should order that defendant pay the sum of five hundred eighty three dollars and 33/100 ($583.33) to plaintiff as her reasonable and necessary attorney's fee in this proceeding.

WHEREFORE premises considered, plaintiff prays that respondent be notified to appear at a time fixed by this court not less than ten days after his receipt of notice and show cause why he should not be held in contempt of the order of this court dated November 6, 1959; that the amount of $1,550.00 now deposited in the registry of the court be ordered paid to Walker Echols, Child Support Officer of Tarrant County, Texas and in turn transmitted to plaintiff, and that defendant R. W. Armstrong, Jr. be ordered to pay any and all other child support payments in arrears, [fol. 297] and that on his failure to do so, he be held in contempt of this court, that plaintiff have and recover judgment for $583.33 as her reasonable and necessary attorney's fee in this proceeding, that all costs in this behalf expended be assessed against R. W. Armstrong, Jr.; and for such other and further relief to which plaintiff may show herself justly entitled, at law or in equity.

/s/ FLOURNOY MANZO
Flournoy Manzo

/s/ SALVATORE E. MANZO
Salvatore E. Manzo, Pro Forma

CRUMLEY AND HOOPER

/s/ WINFRED HOOPER, JR.
Winfred Hooper, Jr.
1405 Fair Building
Fort Worth 2, Texas
Attorneys for Plaintiff

State of Texas)
County of El Paso)

Before me, the undersigned authority, on this day personally appeared Flournoy Manzo, who upon her oath, stated that the above and annexed writing and the allegations thereof are true and correct.

/s/ Flournoy Manzo
Flournoy Manzo

Sworn to and subscribed before me this............... day of April, 1953, to certify which witness my hand and seal of office.

/s/ C. W. Hawks
Notary Public, in and for
El Paso County, Texas

[fol. 298] F. D. Armstrong
vs
R. W. Armstrong
16544-F

To the Clerk:

Please issue notice to R. W. Armstrong, Jr. to appear before the 96th District Court on the 21st day of May, 1963 at 10 o'clock A. M. and show cause why he should not be held in contempt of this court for his failure to make child support payments as heretofore ordered.

/s/ Fisher T. Denny
Judge Presiding
96th District Court
Tarrant County, Texas

[fol. 299] Clerk's Certificate to papers transcript (omitted in printing).

[fol. 300] [File endorsement omitted]

IN THE COURT OF CIVIL APPEALS

FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT EL PASO

No. 5618

[Title omitted]

Appeal From the District Court of El Paso County, Texas
One Hundred Twentieth Judicial District

EXCERPTS FROM SUPPLEMENTAL MOTION TO ABATE ADOPTION PROCEEDINGS—Filed July 9, 1963

Comes now, R. Wright Armstrong, Jr., Appellant, and presents this his supplemental motion to abate the adoption proceedings involved herein, and without waiving any matters urged by him in his brief on file, and in addition to the matters contained in his "Motion to Abate Adoption" on file herein, to which motion reference is hereby made, would also show the following:

[fol. 301] I

That heretofore as shown in Appellant's Motion to Abate and its attached certified exhibits, the Appellees made demand for all child support payments the Appellant was allegedly in arrears and sought to enforce the payment of such funds through contempt proceedings. The period of non-suport sought to be collected through such contempt proceedings is the same period the Appellees urged as grounds for seeking the adoption of Appellant's only child without notice to or consent of the Appellant.

II

That pursuant to such contempt proceedings instituted by the Appellees a hearing was had in the 96th Judicial District Court of Tarrant County, Texas, on July 8, 1963.

That pursuant to such hearing said Court entered an order denying that the Appellant was in contempt of that Court for having failed to make such support payments, and specifically found that the Appellant did contribute to the support of said minor child commensurate with his ability since November, 1959, a certified copy of such order being attached hereto as Exhibit "A" and made a part hereof.

III

That pursuant to such hearing and order, all child support payments due by the Appellant since his divorce in 1959, have been fully paid and no support is currently owing by the Appellant. Attached hereto as Exhibit "B" are supplemental authorities and arguments in support of Appellant's "Motion to Abate Adoption" and this supplemental motion.

Wherefore, Premises Considered, Appellant prays that the relief sought in his "Motion to Abate Adoption" be granted by this Court.

Respectfully Submitted

Morgan & Boling, By: W. Barton Boling, Attorney for Appellant.

[fol. 302] Certificate of Service (omitted in printing).

[fol. 303]

EXHIBIT "A" TO SUPPLEMENTAL MOTION TO ABATE ADOPTION PROCEEDINGS

IN THE DISTRICT COURT, TARRANT COUNTY, TEXAS

96TH JUDICIAL DISTRICT

No. 16554-C

F. D. ARMSTRONG

vs.

R. W. ARMSTRONG

ORDER

On this the 8th day of July, 1963, came to be heard plaintiff's motion to hold defendant in contempt of court and to compel payment of child support and came the Plaintiff by and through her attorney and came the defendant in person and by and through his attorney of record and the defendant announced ready for trial, the plaintiff by her attorney offered to the court a motion for continuance which motion was in all things denied and the trial proceeded before the court without the intervention of a jury since neither party had requested a jury, and the court after having read the pleadings, heard all the evidence including testimony from several witnesses is of the opinion and finds as follows:

1. That immediately after the divorce of the parties hereto on November 6, 1959, that the defendant R. Wright Armstrong, Jr., became physically and mentally ill which rendered him involuntarily incapable of earning sufficient income from which to pay child support as ordered herein; and that such condition continued until March of 1962; and that the defendant did contribute to the support of the minor child in question, Molly Page Armstrong, commensurate with his ability at all times in question since November, 1959; that defendant at this time has paid all amounts

in arrears and now owing by reason of the order heretofore entered herein; that a part of said payment was made by [fol. 304] depositing $1,550.00 into the registry of this court and that said amount should be paid to the child support office of Tarrant County, to the plaintiff's herein for the support of Molly Page Armstrong; and that upon said money being paid the court finds that the defendant R. Wright Armstrong, Jr. is not in contempt of court and that Plaintiff's motion except as hereinbefore stated is in all things denied.

It Is Therefore Accordingly Adjudged and decreed plaintiff's motion to find defendant, R. Wright Armstrong, Jr., in contempt of court is in all things denied and that the defendant, R. Wright Armstrong, Jr., is not in contempt of court.

It Is Further Ordered that the District Clerk shall immediately transfer the money which has been deposited by the defendant in the registry of this court, to wit: $1,550.00, to the child support office of Tarrant County, Texas, for payment to plaintiffs.

Fisher T. Derry
Judge

Approved as to Form

Roswald E. Shrill
Plaintiff

Ronald Aultman
Defendant

[Seal]

[fol. 305]

IN THE COURT OF CIVIL APPEALS

FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT EL PASO

No. 5618

In Re: Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

Appeal from the District Court of El Paso County

OPINION—Delivered September 11, 1963

This is an appeal from an order of the 120th District Court of El Paso County, Texas overruling a motion for new trial and affirming the decree of the court which granted a petition for adoption of the minor child, Molly Page Armstrong, then between four and five years old, by the petitioner, Salvatore E. Manzo, in which petition his wife, Alice Flournoy Davis Manzo, the natural mother of the minor, joined. The motion for new trial was filed by appellant R. Wright Armstrong, the natural father of the child. Appellant and appellee, Alice Davis Manzo (formerly Alice Flournoy Davis Armstrong) were divorced by decree of the 96th District Court of Tarrant County, Texas on November 6, 1959. Custody of the minor child of the parties was awarded to the mother, with visiting privileges granted to the father. The divorce decree contained the provision that the community and separate property of the parties be distributed by agreement of the parties, and the further provision that the father was to pay into the Child Support office of Tarrant County "the sum of $50.00 per month, beginning November 16th., 1959, and continuing thereafter on the 16th. day of each succeeding month until further order of this court, or until said child shall reach 18 years of age." Appellant made one payment of $50.00 into the Child Support office in November of 1959 and in

February of 1960 he made a payment of $150.00 into the office. While it may perhaps be said that there is some ambiguity in the trial court's support order as to the application of the $50.00 monthly payments when made, it is our opinion that the payment in November, 1959, was for the month of November, and the $150.00 payment in February, 1960, was for the months of December, 1959, January, 1960, and February, 1960. There were no further payments into the Child Support office. The appellant here [fol. 306] contends that these two payments covered the period from November 16, 1959 to March 16, 1960. The verified petition for adoption was filed on March 12, 1962 and alleged that:

> "7. Written consent of the natural father R. W. Armstrong, Jr., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability to do so for a period in excess of two (2) years, and the Judge of a Juvenile Court of El Paso County, Texas, to-wit: Judge Mulcahy, Judge of the 41st Court, has consented in writing to said adoption under provisions of Section 6, Article 46A, Texas Civil Statutes."

Appellant's first point cites error of the court in not rendering judgment for appellant setting aside the adoption because there is no evidence that appellant failed to contribute substantially to the support of the child for a two-year period prior to the filing of the petition for adoption, commensurate with his financial ability, or that such finding was against the great weight and preponderance of the evidence. Appellant states the child support having been paid until March 16, 1960, that for at least four days of the alleged two-year period the appellant had contributed support to his daughter. However, our interpretation of the court's support order, as indicated above, is that support payments into the Child Support office covered a period of time through the month of February, 1960, only, and that the adoption petition was filed twelve days thereafter.

But appellant asserts that he had made other payments and contributions in addition to those made to the Child Support office, which should be considered child support payments. After the divorce, the minor child on occasions visited her father and grandparents, with whom her father resided, in Fort Worth. Appellant states that on one of these occasional visits, in the summer of 1961, he "bought her some clothes" and "bought her lots of toys" and took her to a production of the Wizard of Oz, the total of these expenditures running "in the neighborhood of $75.00." The following Christmas, on another visit, he "took her to a clothing store and purchased three dresses and a purse for her Christmas" at a cost of $50.00.

[fol. 307] In February of 1960, after the divorce from appellant was granted appellee Alice Davis Manzo in November, 1959, their house was sold for an amount slightly in excess of a thousand dollars. Appellant contends that it was his understanding that the proceeds from this sale were to be divided between the parties on a fifty-fifty basis but that he directed that the majority of the money be sent to his ex-wife "for the benefit of the child." He testified that Mrs. Manzo received somewhere in the neighborhood of $875.00 and that he received something like $150.00 or $160.00. However, there was introduced in evidence a property settlement agreement executed by the parties before the divorce and reaffirmed and ratified by the parties after the divorce which contains the following paragraph:

> "During their marriage, the parties occupied as their home the residence located at 6853 Middle Road, Fort Worth, Texas. Two Thousand Five Hundred Dollars ($2,500.00) of the down payment for such property was paid out of the separate funds of Flournoy D. Armstrong. In the event that a divorce be granted in the above mentioned suit, such property shall be sold within a reasonable time for the best available offer, taking into consideration the condition of the real estate market, and the net proceeds, if any, therefrom shall be pro rated between the parties proportionate to the separate interest of Flournoy D. Armstrong therein and the community interest of the parties

> therein. The parties hereto shall execute any instrument necessary or desirable to consumate sucn sale."

This provision certainly seems to be at variance with, and refutes, appellant's claimed understanding as to the equal division of the proceeds of the sale of the home, and that any part of his share of these proceeds was to be considered a contribution by him a child support.

During the period of time after the divorce and up until the date of filing of the adoption petition the appellant had been, on various occasions, ill, unable to work and in the hospital. However, according to our calculations from the evidence presented, appellant had earned during this period an amount in excess of $4,200.00, at least $3,500.00 of which was earned in the two-year period prior to the filing of the adoption petition. For the entire period since the divorce he had paid only $200.00 into the Child Support [fol. 308] office. Appellant was a duly licensed and practicing attorney living in Fort Worth, Tarrant County, Texas where the divorce decree with child support order was entered, but he at no time made any effort to have the support order modified or to obtain credit from the Child Support office for the contributions and expenditures he claims to have made for the benefit of his minor child in addition to the two payments made directly into the office. Aside from what income he received in his law practice, he had been employed at various times as Assistant City Attorney, substitute judge of the Corporation Court and finally filled a vacancy as full-time Corporation Court judge in Fort Worth. He was living with his parents who were not only furnishing him food and shelter but paying many incidentals such as carfare, haircuts and laundry. He was either employed in public office without expense, or working in a law office without expense. At the time of the filing of the adoption petition he was employed as Corporation Court judge at a salary of $239.44 every two weeks and had been so employed for about a month. He had bought a Pontiac automobile. He testified that he had paid off community debts, but even in this his family helped him. We feel that, from the record, the conclusion is inescapable that the appellant failed to contribute substantially to the support of his child for a two-year period prior to the filing of the petition for adoption commensurate with his financial ability, and the trial court so found in his Conclusions of Law. Appellant's first point of error is accordingly overruled.

However, appellant urges in his second point of error that the provisions of Section 6 of Article 46a, T.R.C.S., had not received full compliance. This is the statutory provision that permits an adoption without the written consent of a living parent of the child sought to be adopted when such parent shall not have contributed substantially to the support of such child during a period of two years *commensurate with his financial ability,* upon written con- [fol. 309] sent to the adoption by the judge of the juvenile court of the county of such child's residence. Appellant points out that neither the affidavit accompanying the adoption petition nor the consent of the juvenile judge herein contained the italicized language. The cases of Moorman v. Hunnicut, 325 S.W.2d 941 (Civ.App., 1959, ref. N.R.E.) and Stinson v. Rasco, 316 S.W.2d 900 (Civ.App., 1958, no wr.hist.) are cited as authorities that the provisions of the statute must receive strict compliance. The latter case holds:

> "While adoption statutes are to be liberally construed in favor of minors in order to effectuate their beneficial purpose, Woodall v. Schmudlach, Tex. Civ. App. 299 S.W.2d 780, the rule of strict construction applies in favor of a non-consenting parent. Jones v. Willson, Tex.Civ.App., 285 S.W.2d 877. Especially so 'in those cases where it is claimed that owing to misconduct his consent to the adoption is not required. Every intendment should be made in such case in favor of the parent's claim; and where the statute is open to construction and interpretation, it should be construed in support of the parent's natural rights.' 1 Am. Jur. pp. 626, 627."

We agree with the holding in these cases. But in the instant case the petition contained allegations strictly in conformance with the statute and this petition was verified by the affidavit of both petitioners for the adoption. We believe that in determining whether there has been compliance with the statute, the whole record should be examined, and such an examination in the instant case, in our opinion, reveals full compliance; and as has been shown, it is our further opinion that the allegations of the petition have been supported by testimony herein.

Under Point Two appellant further complains that there was no showing that the requirements of Sec. 1c of Art. 46a, T.R.C.S., had been met. This section reads as follows:

> "Sec. 1c. After the filing and docketing of the petition, *and in order to aid in completing the investigator's report required by law, there shall be furnished upon the request* of the Judge of the Court in which said application is pending, or the investigator appointed by the Court, or the Executive Director of the State Department of Public Welfare, the following information: (1) the name of the child as it appears on the birth certificate; (2) the names, residences, and/or street addresses of the natural parents; or if [fol. 310] the names and addresses of the natural parents or the name of said child are unknown to the petitioner, such fact or facts should be so stated to either the Judge, investigator, or the Executive Director of the State Department of Public Welfare *requesting such information,* in which event there shall be furnished in response to such requests, the name and address of any person, agency or institution having such information." (Emphasis suppied.)

The record herein reflects that a certified copy of the adoption petition was mailed by the Clerk of the Court to the Executive Director of the State Department of Public Welfare in Austin, Texas, in compliance with the provisions of Sec. 1b of said Art. 46a, T.R.C.S. The judge of the trial court made a Finding of Fact that he did not request, nor did the report of the investigator show that the investigator requested any of the information set forth in Section 1c, Art. 46a, supra. There is nothing in the record to indicate that the Executive Director made any such request. Had he done so, and appellees failed to furnish the information in response to such request, this certainly would be a factor to be shown by appellant in seeking to set aside the decree of adoption for want of jurisdiction of the trial court. We do not feel that it was incumbent upon appellees to negative the fact of such request, especially as the point was not raised in either appellant's first or amended motion for a new trial. For these considerations, the objections raised in appellant's Point No. 2 are overruled.

Appellant's third point urges the unconstitutionality of Article 46a, T.R.C.S., in that it permits an adoption without notice to or consent of a natural parent, thereby depriving such parent of his child without due process of law. Point Four maintains that the trial court erred in not rendering judgment for appellant setting aside the adoption because the undisputed evidence shows that the adoption judgment was obtained without any notice to appellant. That no notice was given appellant before the adoption is undisputed, but the necessity for such notice depends upon the answer to Point No. Three.

This matter was passed upon in the case of Lee v. Purvin, [fol. 311] 285 S.W.2d 405 (Civ.App., 1955, wr.ref., N.R.E.) and we have been unable to find any later expression on the subject. The language employed in the cited case is as follows:

> "The ninth point in appellant's brief is as follows: 'Art. 46a of Revised Civil Statutes of Texas, permitting an adoption of appellant's children without his consent and without notice to him of any nature of such adoption proceedings is an unconstitutional deprivation of petitioner's children without due process of law and void.' Although this court entertains serious doubt as to the correct solution of the problem presented by the foregoing point, we are constrained to overrule the contention of appellant thus presented on the authority of Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217 and De Witt v. Brooks, 143 Tex. 122, 182 S.W.2d 687. We believe, however, that where the living parents are without notice of adoption proceedings, and where they do not give written consent for such adoption, they must be allowed a full hearing in a subsequent proceeding on the issue of whether sufficient facts existed as to au-

> thorize the entry of the judgment of adoption. Such, as we understand it, is the substance of the holding by the Supreme Court in the case of De Witt v. Brooks, 143 Tex. 122, 182 S.W.2d 687, supra."

A full hearing was afforded the appellant in the case before us on his amended motion for new trial, and the court after said hearing found against appellant and affirmed its original judgment of adoption. We must conclude that this case comes within the purview of the holding in Lee v. Purvin, supra, and that appellant's third and fourth points must be overruled.

The judgment of the trial court is accordingly affirmed.

William E. Clayton, Associate Justice.

[fol. 312] Clerk's Certificate to paper transcript (omitted in printing).

[fol. 313] [File endorsement omitted]

[fol. 314]

IN THE COURT OF CIVIL APPEALS

FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT EL PASO

No. 5618

[Title omitted]

EXCERPTS FROM APPELLANT'S MOTION FOR REHEARING— Filed September 24, 1963

* * * * * * *

[fol. 315] III.

The Court of Civil Appeals erred in not sustaining Appellant's third point of appeal as follows:

> "The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on which the adoption is founded, or in any event, Section 6 of Article 46a on which the adop-

tion is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law."

IV.

The Court of Civil Appeals erred in not sustaining Appellant's fourth point of appeal as follows:

> "The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the appellant."

* * * * * * *

[fol. 316] Respectfully Submitted

Morgan & Boling, Attorneys for Appellant, 601 Bassett Tower, El Paso, Texas, By: W. Barton Boling.

[fol. 317] [File endorsement omitted]

[fol. 318]

IN THE SUPREME COURT OF TEXAS

No. A-9860

In the Matter of the Adoption of
MOLLY PAGE ARMSTRONG, a Minor.

EXCERPTS FROM APPLICATION FOR WRIT OF ERROR—Filed November 18, 1963

* * * * * * *

[fol. 319] Points of Error

* * * * * * *

[fol. 320] III.

The Court of Civil Appeals erred in not sustaining Appellant's third point of appeal as follows:

> "The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on which the adoption is founded, or in any event, Section 6 of Article 46a on which the adoption is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law." Third ground, motion for rehearing.

IV.

The Court of Civil Appeals erred in not sustaining Appellant's fourth point of appeal as follows:

> "The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the appellant." Fourth ground, motion for rehearing.

• • • • • • •

[fol. 321] Respectfully submitted,

Morgan & Boling, Attorneys for Petitioner, R. Wright Armstrong, Jr., 601 Bassett Tower, El Paso, Texas, By: W. Barton Boling.

Clerk's Certificate to paper transcript (omitted in printing).

[fol. 322] [File endorsement omitted]

[fol. 323]

IN THE SUPREME COURT OF TEXAS

No. A-9860

[Title omitted]

EXCERPTS FROM MOTION FOR REHEARING—Filed January 29, 1964

• • • • • • •

[fol. 324]

III.

This Motion for Rehearing Should Be Granted Because Section 6, Article 46a Is Unconstitutional or in Any Event the Trial Court Applied Article 46a and Conducted the Proceedings in an Unconstitutional Manner.

Without again going over the argument outlined in petitioner's application for writ of error as to why Article 46a, and particularly Section 6 thereof is unconstitutional, the court in *Pearce* v. *Harris,* 134 SW2d 859 (Civ. App. 1939, no writ hist.), although not called upon to actually answer the question, recorded that it questioned the validity of such a statute, and the court in *Lee* v. *Purvin,* 285 SW2d 405 (Civ. App. 1955, n.r.e.) although upholding the statute, did so with obvious reluctance. When a statute of this magnitude is being used almost every day throughout the courts of this state and when the only direct holding of its validity is with some doubt, it is submitted that this motion should be granted so the question can be pre- [fol. 325] sented to this court for final determination. Such a determination would give security to the courts, attorneys and litigants in matters of this nature, a security that does not now exist to any degree one way or the other.

The initial adoption decree was obtained by default. The petitioner did not consent to the adoption and did not have notice of the adoption until after the fact. Although the respondents knew the whereabouts of the petitioner and although the child in question was permitted to visit in Fort Worth where petitioner was during the two years in question, the respondents never advised petitioner of their intentions and never sought support from petitioner. They did not seek support and in fact were hoping petitioner would not support so they could attempt to obtain the adoption without consent of petitioner being necessary. (S.F. 13, 14, 27, 28). Petitioner learned of the adoption in time to file a motion for new trial. In due time he amended his motion and it was set down for hearing. At the hearing on petitioner's motion for new trial petitioner submitted evidence that he had not consented to the adoption; that he had no notice of the adoption proceedings; and that in fact he had a meritorious defense to respondents' petition in that he had not failed to contribute substantially to the support of his child for a two year period commensurate with his financial ability. Under a statute of this nature which allows an adoption without consent, it is here urged that when an adoption is granted by default without consent of or notice to the natural parent, the trial court must, when the natural parent presents his motion for new trial, in due time, grant to that natural parent a new trial when at the hearing on the motion for new trial the natural parent produces evidence that he did not consent, that he had no notice, and that he has a meritorious defense to the adoption petition. The trial court erred in this case by not granting the new trial requested.

The trial court also erred in apparently treating the hearing on the motion for new trial not as a hearing on the motion but rather as the new trial itself. If it had been treated as a hearing on a motion for new trial asking [fol. 326] that a default adoption judgment be set aside, then it is submitted, under the facts and circumstances of this case, the trial court was obliga[illegible] to grant a new trial. If, however, the trial court dealt with the hearing as the new trial itself, as the trial court obviously did, then the petitioner was unduly burdened by the trial court and was deprived of a number of his legal rights.

First, if petitioner had been aware the hearing was the new trial itself, then he would not have believed himself restricted by the rigid time limits contained in Rule 329b, Texas Rules Civil Procedure, but could have prepared his defense and marshalled his evidence in a more orderly fashion and could have obtained live testimony rather than being obligated to use rushed depositions.

Second, if petitioner had been aware the hearing was actually the new trial itself, then he could have pointed up to the trial court and insisted to the trial court that the respondents had the burden of proof and the burden of going forward with the evidence. As it was, supposedly only a hearing on a motion for new trial to set aside a default judgment, the petitioner went forward with the evidence as requested by the trial court and petitioner was erroneously required to assume the burden of proof. If it had been merely a hearing on petitioner's motion for new trial to set aside the default judgment the petitioner did have the burden, but that burden would only have been to show he did not consent; that he had no notice; and that he had a meritorious defense. The petitioner successfully met that burden and a new trial should have been ordered on the merits. If a new trial had been granted, then at the trial on the merits the respondents would have had the burden of showing compliance with Article 46a and would have had the burden of showing themselves entitled to an adoption. Instead, the trial court at the hearing on petitioner's motion for new trial used that hearing as the new trial itself and by so doing placed the improper burden of proving the adoption to be an invalid adoption on the petitioner.

[fol. 327] Third, the petitioner at strictly a hearing on his motion for new trial to set aside a default adoption judgment would not be entitled to a jury and so none was requested, but the trial court, by treating the hearing as actually the new trial on the merits, effectively prevented and denied to the petitioner the right to have the merits of the case passed on by a jury.

The accumulated action by the trial court in these particulars worked to deny to the petitioner a fair trial on the merits and worked to deny the petitioner a trial by jury. In short the trial court used and applied the statute in this case in such a way as to deny the petitioner his child without due process of law.

IV.

This Motion for Rehearing Should Be Granted Because Petitioner Had No Notice of the Initial Adoption Hearing.

Notice is a requirement to a valid adoption. It has been held, however, that when written consent of the natural parent is obtained then notice is not necessary, the reasoning being that the fact of the written consent evidences the natural parent had notice. *Medina* v. *Yzaguirre,* 304 SW 2d 715 (Civ. App. 1957, no writ hist.); *Strode* v. *Silverman,* 209 SW 2d 415 (Civ. App. 1948, n.r.e.).

Only one case has been found where it was definitely held that when a statutory exceptions is alleged and proved, neither consent or notice is required. *Trotter* v. *Pollan,* 311 SW 2d 723 (Civ. App. 1958). The Supreme Court in a per curiam opinion refused application, no reversible error, but specifically noted that their order should not be taken as either approving or disapproving the holding of the Court of Civil Appeals as to the validity of the adoption decree. 313 SW 2d 603.

[fol. 328] It is submitted that the Trotter case is incorrect. There is nothing in Article 46a which specifically does away with notice. The requiring of notice would insure that the natural parent would have an opportunity to come in, if desired, and defend in an orderly fashion. Regardless, this court should grant this motion and record its position in the matter for future guide. To permit adoptions without notice causes nothing but confusion. The requiring of notice is of little effort when it is remembered we are dealing with people and their children. It would seem just as important to require notice in an adoption case where an effort is being made to take a person's child as it is in a case where an effort is being made to take a person's property. Inasmuch as petitioner had no notice of the initial adoption proceedings, the adoption decree should not be allowed to stand.

* * * * * * *

[fol. 329] Respectfully submitted,

Morgan & Boling, Attorneys for Petitioner, R. Wright Armstrong, Jr., 601 Bassett Tower, El Paso, Texas, By W. Barton Boling.

[fol. 330] Clerk's Certificate to paper transcript (omitted in printing).

[fol. 331]

IN THE SUPREME COURT OF TEXAS

No. A-9860

From El Paso County, Eighth District

R. WRIGHT ARMSTRONG, JR.,

vs.

SALVATORE E. MANZO et ux.

ORDERS REFUSING APPLICATION FOR WRIT OF ERROR AND OVERRULING MOTION FOR REHEARING—January 15, 1964

Application of petitioner for writ of error to the Court of Civil Appeals for the Eighth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, R. Wright Armstrong, Jr. and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca, Sr., pay all costs incurred on this application.

March 4, 1964

No. A-9860

From El Paso County, Eighth District

R. Wright Armstrong, Jr.,

vs.

Salvatore E. Manzo et ux.

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 332]

IN THE COURT OF CIVIL APPEALS

EIGHTH JUDICIAL DISTRICT OF TEXAS

AT EL PASO

No. 5618

In Re:

Adoption of Molly Page Armstrong, a Minor.

TRANSCRIPT

October 9th., 1962. Appellee's motion to extend the time to brief until October 15th., 1962, submitted.

October 10th., 1962. This day came on to be heard appellee's motion to extend the time to file brief until October 15th., 1962, and the Court having considered the same, is of the opinion that the same should be granted.

Wherefore, it is considered, adjudged and ordered that appellee's said motion be, and the same is hereby, granted.

June 11, 1963. Appellee's motion to advance submission, submitted June 12th., 1963. This day came on to be heard the motion of appellee, to advance submission, and the Court having considered the same, is of the opinion that the same should be granted.

Wherefore, it is considered, adjudged and ordered that appellee's said motion be, and the same is hereby, granted; and the submission of said cause is here and now set down for submission for Wednesday, July 10th., A. D. 1963.

July 9th., 1963. Appellant's motion to abate adoption proceedings involved herein, submitted.

July 9th., 1963. Appellant's supplemental motion to abate adoption proceedings, submitted.

July 10th., 1963. Submitted on briefs and on oral argument of each party.

[fol. 333] July 16th., 1963. Appellant's motion for leave to file supplemental transcript, submitted.

September 11th., 1963.. This day came on to be heard appellant's motion to abate adoption proceedings involved herein, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

September 11th., 1963. This day came on to be heard appellant's supplemental motion to abate adoption proceedings, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

September 11th., 1963. This day came on to be heard appellant's motion for leave to file supplemental transcript, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

JUDGMENT

September 11th., 1963. This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellees, Salvatore E. Manzo and Alice Davis Manzo, do have and recover of and from the appellant, R. Wright Armstrong, Jr., and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca, Sr., all costs in this behalf incurred, and this decision be certified below for observance.

[fol. 334] October 1st., 1963. Motion of appellant, R. Wright Armstrong, Jr., for a rehearing, submitted.

ORDER OVERRULING REHEARING

October 16th., 1963. This day came on to be heard motion of appellant, R. Wright Armstrong, Jr., for a rehearing, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that the motion of appellant, R. Wright Armstrong, Jr., for a rehearing, be, and the same is hereby, overruled.

IN THE SUPREME COURT OF TEXAS

From El Paso County

No. A-9860

R. WRIGHT ARMSTRONG, JR.,

v.

SALVATORE E. MANZO, et ux.

January 15, 1964.

Application of petitioner for writ of error, to the Court of Civil Appeals for the Eighth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no evidence requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, R. Wright Armstrong, Jr., and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca, Sr., pay all costs incurred on this application.

No. A-9860

March 4, 1964.

Petitioner's motion for a rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

[fol. 335] May 1st., 1964. Now comes appellant, R. Wright Armstrong, Jr., and moves the Court to withdraw the original record filed with the Clerk of this Court consisting of one copy each of all instruments filed with the Clerk of this Court exclusive of the motion to advance and the answer to the motion to advance. For grounds, therefor, appellant would show that the judgment of the trial Court was affirmed on September 11, 1963, and thereafter appellant's application for writ was of error filed with the Texas Supreme Court, being refused, no reversible error, on January 15, 1964, and a second motion for rehearing filed and overruled in March, 1964, and that according to Rule 21 (1) of the United States Supreme Court rules, a certified transcript of the record must be filed prior to June 6, 1964, in the United States Supreme Court.

Such papers are to be preserved and kept in their original forms as delivered, and when they have served all necessary purposes in connection with the appeal to the Supreme Court of the United States, are to be returned to the Clerk of this Court. Petitioner and his attorneys are charged with the duty of safe delivery and return of such original papers, and will bear all costs of transportation in connection therewith.

Alan R. Fraser, Chief Justice of the Court of Civil Appeals for the 8th Supreme Judicial District of Texas.

[fol. 336] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 338] Clerk's Certificate (omitted in printing).

[fol. 339]

SUPREME COURT OF THE UNITED STATES

No. 149—October Term, 1964

R. WRIGHT ARMSTRONG, JR., Petitioner,

vs.

SALVATORE E. MANZO, et ux.

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the Court of Civil Appeals of the State of Texas, Eighth Supreme Judicial District, is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.